United Nations CAT/C/CAN/7

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
13 September 2016

Original: English and French
English, French and Spanish only

Committee against Torture

# Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

## Seventh periodic reports of States parties due in 2016

## Canada*, **, ***

[Date received: 5 August 2016]

* The sixth periodic report of Canada is contained in document CAT/C/CAN/6; it was considered by the Committee at its 1076th and 1079th meetings, held on 21 and 22 May 2012 (CAT/C/SR.1076 and 1079). For its consideration, see the Committee's concluding observations (CAT/C/CAN/CO/6).

** The present document is being issued without formal editing.

*** The annexes to the present report are on file with the secretariat and are available for consultation. They may also be accessed from the web page of the Committee against Torture.

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# Introduction

1. Canada is pleased to submit to the Committee against Torture its Seventh Report under Article 19 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). This report focuses on key measures adopted in Canada to enhance implementation of the Convention since Canada's last appearance before the Committee in May 2012, and responds to a list of issues provided by the Committee.[1]

2. The responses focus on issues of core relevance to the Convention's protections, while referring the Committee to additional information recently provided by Canada to this and other human rights treaty bodies. A statistical annex is provided in relation to Questions 10 and 13.

3. This report is on implementation by all orders of government. Any reference to "the Government of Canada" is a reference to the Canadian federal government, while a reference to "Canada" is generally a reference to the federal, provincial and territorial governments combined. Any reference to a province or territory (for example, Quebec, Manitoba, or the Yukon) is generally a reference to its government.

### Measures to strengthen implementation

4. Canada has a strong framework of laws and policies to implement the Convention, including the *Canadian Charter of Rights and Freedoms* (Charter), the *Criminal Code*, the *Immigration and Refugee Protection Act* (IRPA), the *Extradition Act*, the *Corrections and Conditional Release Act* (CCRA), as well as many other legal and operational measures. There have been a number of positive developments in the reporting period to further enhance Canada's implementation.

5. With respect to the Optional Protocol to the Convention, Canada is committed to the prevention of torture and the elimination of cruel, inhuman and degrading treatment or punishment (CIDTP), at home and abroad. Canada values independent oversight of conditions in places of detention. On May 2, 2016, the Minister of Foreign Affairs stated that the Optional Protocol "will no longer be optional for Canada in the future", and that Canada would begin a process to join it. The accession process will involve extensive consultations with other interested federal departments; the provinces and territories; Indigenous governments that may be implicated; and civil society. The Minister of Foreign Affairs is confident that once the necessary steps have been taken and all voices have been heard, Canada will be in a position to accede to the Optional Protocol. Acceding to and ratifying the Optional Protocol will lend more weight to calls on other countries to guarantee independent oversight of conditions of detention.

6. Canada wishes to highlight several other recent developments, which will be discussed in more detail throughout the report:

- Absolute prohibition: In 2014, the Supreme Court of Canada affirmed that the absolute prohibition of torture is a *jus cogens* norm of international law, and that torture by Canadian officials would be blatantly contrary to the Charter (Questions 1 and 3).
- Criminal prosecutions: In August 2015, a Syrian official was criminally charged in Canada for his involvement in the torture of a Canadian citizen (Questions 1 and 3).

[1] CAT/C/CAN/QPR/7 (dated 28 July 2014). This introduction is Canada's response to Question 35.

- Ensuring non-refoulement: The Refugee Appeal Division (RAD) of the Immigration and Refugee Board was launched in December 2012, allowing most failed refugee claimants to appeal a negative initial determination. As of Summer 2015, claimants from designated countries of origin now also have access to the RAD (Question 5).

- International co-operation: Since May 2012, Canada has received nine requests for mutual legal assistance from foreign countries or other entities in cases involving allegations of torture. Canada has been able to provide assistance in five of them so far (Questions 14, 15, and 16).

- Conditions of detention: All orders of government have taken measures to reduce overcrowding in prisons. In May 2014, the Government of Canada launched its Mental Health Action Plan for Federal Offenders (Question 19).

- Strengthening police accountability: Legislation enacted in June 2013 significantly reformed the accountability structures for the Royal Canadian Mounted Police (RCMP), including by establishing the Civilian Review and Complaints Commission, which is external and independent. British Columbia's Independent Investigations Office became operational in 2012, and in 2013 Quebec passed legislation to establish an Independent Investigation Bureau (Questions 20 and 26).

- Strengthening national security accountability: The Government of Canada has introduced legislation to create a committee of parliamentarians with special access to classified information. The committee will be mandated to scrutinize national security and intelligence activities across the Government of Canada to ensure respect for the law and democratic values. The federal government will also engage in public consultations to ensure that Canada's national security framework reflects Canadians' needs and values (Question 34).

- Tracking police use of force: Canada's national Guidelines for the Use of Conducted Energy Weapons (CEWs), first issued in October 2010, were amended in 2014 following the completion of a national CEW research agenda (Question 32).

- Contributing to global refugee resettlement: The federal government has committed to increasing the resettlement of refugees from Syria, over and above the current commitment to refugees from elsewhere. As of February 29, 2016, more than 25,000 Syrian refugees have been resettled in over 100 communities across Canada (Question 29). Aside from Syrian resettlement efforts, Canada has several multi-year refugee commitments underway including for Congolese, Eritrean, and Colombian refugees. This is in addition to the resettlement of individuals from other nationalities identified by the UNHCR and private sponsors in Canada. Effective April 2016, Canada has fully restored the Interim Federal Health Program that provides limited and temporary health benefits to resettled refugees and asylum claimants. By April 2017, Canada will extend the program to systematically cover a targeted set of pre-departure health services to refugees identified for resettlement to Canada.

**Canada's federal system – Policing, criminal justice, corrections**

7. Canada is a federal state, with a federal government, 10 provincial governments, and 3 territorial governments. Each government has its respective sphere of constitutional jurisdiction. All orders of government take seriously their obligations under the Convention and share a strong commitment to work together to protect and advance human rights in Canada.

8. Police services exist at federal, provincial, territorial and municipal levels. Although they report to government ministers (federal, provincial or territorial), they enjoy a significant degree of operational independence in conducting criminal investigations. The RCMP is the federal police force, and it also provides policing services under contract to the three territories, eight of the provinces (Ontario and Québec have their own provincial police forces), more than 190 municipalities, 184 Aboriginal communities, and three international airports. Many provinces also have regional or municipal police forces.

9. The laying or maintaining of criminal charges is subject to oversight by government prosecution services (usually referred to as "Crown prosecutors"). For certain crimes carrying significant public stigma – such as terrorism and hate propaganda – the *Criminal Code* specifically requires, as an additional safeguard, the consent of the relevant Attorney General. Crown prosecutors are tasked with ensuring that criminal charges do not proceed unless there is a reasonable prospect for conviction, and a prosecution would be in the public interest. Prosecutors are subject to ethical, procedural and constitutional obligations, and are expected to discharge their duties with fairness, objectivity and integrity.

10. Criminal sentences of two years or more are served in federal penitentiaries, and are administered by the Correctional Service of Canada (CSC), pursuant to federal legislation (the CCRA). Provincial and territorial governments are responsible for sentences of less than two years, offenders sentenced to probation, and young offenders. Each province and territory has its own agency for administering its correctional institutions.

11. All governments consult with civil society, community groups, Indigenous organizations and other stakeholders on specific policies and programs that implement human rights. Their views were crucial in building the present report. As part of the preparation of Canada's report, several civil society organizations shared their views on the Committee's list of issues. Where appropriate, these issues are also addressed in this report.

## Questions 1 and 3

### The Convention in domestic Canadian law

12. As discussed above and in Canada's previous reports, Canada continues to rely on the Charter and many other legal and operational measures, as the principal means to implement Canada's international obligations to prevent, prosecute and punish torture and other CIDTP within Canada.

13. Canada's international human rights treaty obligations are regularly invoked before and by domestic courts at all levels, as well as in front of administrative decision-makers. International treaties that Canada has ratified are not directly applicable in Canada, but can inform the interpretation of domestic law. Human rights treaties such as the Convention are relevant in determining the ambit of rights protected by the Charter. For example, the Convention has been used to interpret s. 7 of the Charter, which guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.[2] Canadian courts also refer to relevant provisions of treaties to which Canada has adhered to interpret ordinary (non-Constitutional) legislation and in reviewing administrative action. For example, courts will interpret ordinary legislation as though the legislature intended to comply with Canada's treaty obligations, absent a clear intention to the contrary.

[2] See e.g. *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62 at para. 150, http://canlii.ca/t/gdwht; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, http://canlii.ca/t/51wf.

14. Several provisions of the Convention are specifically incorporated in Canadian legislation:

- For the purpose of non-refoulement, the Convention's definition of torture is directly referenced in the definition of "person in need of protection" in the IRPA (see Question 11). The Convention is accordingly cited frequently by relevant bodies when deciding whether a person is in need of protection.[3]
- The criminal offence of torture, established in s. 269.1 of the *Criminal Code*, essentially duplicates the Convention's Article 1 definition of "torture" (see Question 2).
- The federal statute governing correctional facilities expressly prohibits CIDTP of offenders (see Question 19).
- The exclusionary rule at Article 15 of the Convention is directly reflected in s. 269.1(4) of the *Criminal Code*. (see Question 30).

15. Additional information on international human rights instruments and domestic law is at paragraphs 136-148 of Canada's core document.

**Noteworthy references to the Convention by courts**

16. In its 2014 decision in *Kazemi*,[4] the Supreme Court of Canada considered whether the *State Immunity Act* is contrary to the Charter, to the extent that it prevents torture victims (or their next of kin) from suing foreign state officials for acts of torture committed abroad. Among the considerations referred to by the Court were Canada's obligations under Article 14 of the Convention, and the Committee's views on that provision. Ultimately, the Court decided that the availability of such a civil remedy was not a constitutional requirement, while emphasizing that the prohibition of torture is a *jus cogens* norm of international law. The Court noted that "[i]f the Canadian government were to carry out acts of torture, such conduct would breach international law rules and principles that are binding on Canada, would be illegal under the *Criminal Code*, and would also undoubtedly be unconstitutional", in particular because it would be "blatantly contrary" to the Charter prohibition of cruel and unusual treatment or punishment.

17. In its 2014 decision in *Diab*,[5] the Ontario Court of Appeal cited Article 15 of the Convention in determining that the Minister should refuse to surrender an individual for extradition where there is a substantial risk that torture-derived evidence will be used against the person in the requesting state. In *Isa*,[6] another extradition proceeding, the Alberta Court of Appeal referred to Article 15 in emphasizing the inadmissibility of evidence derived from torture (see Question 30).

**Extraterritorial jurisdiction over offences related to torture**

18. Torture is an offence under the *Criminal Code*. When an offence related to torture is committed outside Canada, s. 7(3.7) of the *Criminal Code* provides for special jurisdictional rules. Extraterritorial acts constituting offences related to torture are considered to have been committed in Canada if, for example, the person who committed

[3] See, for two recent examples, *Ivanenshvili v. Canada (Citizenship and Immigration)*, 2014 FC 1056 at para. 38, http://canlii.ca/t/gfkcg; *Rajaratnam v. Canada (Citizenship and Immigration)*, 2014 FC 1071 at para. 34, http://canlii.ca/t/gf9pv

[4] *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, http://canlii.ca/t/gdwht

[5] *France (Republic) v. Diab*, 2014 ONCA 374, http://canlii.ca/t/g6w4d

[6] *United States of America v. Isa*, 2014 ABCA 256, http://canlii.ca/t/g8j4z

the act is a Canadian citizen, the complainant is a Canadian citizen, or the person who committed the act is present in Canada. "Offences related to torture" include the commission of torture, as well as attempting, counselling, conspiracy to commit, or being an accessory after the fact. If the accused is a non-citizen, then proceeding with prosecution for such extra-territorial acts requires the consent of the Attorney General of Canada. The consent decision is delegated to the Deputy Director of Public Prosecutions of Canada and is a matter of prosecutorial discretion, exercised in light of the sufficiency and availability of the evidence and the public interest in proceeding with a prosecution.

19. Similarly, s. 8 of the *Crimes Against Humanity and War Crimes Act* allows the extraterritorial prosecution of individuals alleged to have engaged in torture, where this constitutes the underlying act of a war crime or a crime against humanity. It contains broader jurisdictional provisions than the *Criminal Code*, reflecting its application to situations of armed conflict and other circumstances where such crimes might be committed. The consent of the Attorney General of Canada is required to commence a prosecution for such crimes.

20. Investigations for extraterritorial offences related to torture can be conducted by a provincial police force or the RCMP. Prosecutions for such offences may be prosecuted either by a provincial Attorney General, or by the Public Prosecution Service of Canada, depending on the circumstances surrounding the offence. Investigative decisions by police forces, as well as exercises of prosecutorial discretion by the Crown, are made independently and free from political influence. Individuals may mount private prosecutions, subject to the abovementioned requirement of Attorney General consent.

21. A charge has recently been laid under the special jurisdictional provisions. On August 31, 2015, the RCMP laid a charge against Syrian official George Salloum for his involvement in the torture of Canadian citizen Maher Arar. This charge was laid *in absentia* under s. 269.1 of the *Criminal Code* after a complex investigation involving a number of countries and non-governmental organizations, including Amnesty International. This was the first investigation in Canada involving a charge against a foreign official for torture committed in his own country. The RCMP will continue to work with domestic and international law enforcement and security partners in locating Salloum in order to begin the extradition process, to bring him to Canada where he will face justice.

## Question 2

22. Torture is a criminal offence under s. 269.1 of the *Criminal Code*. It provides that every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence. "Torture" is comprehensively defined by s. 269.1(2), in a manner that is in accordance with the Convention's Article 1 definition.

23. The grave nature of torture is reflected in the penalty provisions. Individuals convicted of committing torture, being a party to torture (i.e., aiding or abetting, or counselling), or conspiring with another to commit torture are liable to a term of imprisonment not exceeding 14 years. There is a maximum penalty of seven years imprisonment if an individual attempts to commit torture, is an accessory after the fact to torture, or counsels its commission where the torture is not committed.

24. Consistent with Canada's commitment to preventing torture through measures such as those required by the Convention, it is rare to see prosecutions involving the *Criminal Code* offence of torture. Canada is not aware of any cases within the reporting period in which a Canadian official has been charged under s. 269.1. There have been disciplinary investigations into alleged excessive use of force by law enforcement or other officials.

which while it does not amount to torture or CIDTP, is taken very seriously (see Questions 17, 20, 25).

## Question 4

### Medical examinations in correctional facilities

25. The CSC is required by law to "provide every inmate with essential health care and reasonable access to non-essential mental health care that will contribute to the inmate's rehabilitation and successful reintegration into the community." Such health care must conform to professionally accepted standards. In all decisions affecting the offender, the CSC is required to consider an offender's state of health and health care needs. Any person alleging an injury or illness while in CSC custody receives a thorough and impartial examination by a licensed doctor or nurse.[7]

26. Inmates receive comprehensive nursing assessment to identify health care issues on an ongoing basis (at admission, transfer and throughout their sentence), including health issues that may be related to past torture and ill treatment. CSC's nursing intake assessment process emphasizes early identification of health care issues at intake and early referral for follow up.

27. Within 24 hours of arrival, inmates undergo a comprehensive physical health assessment and initial mental health assessment designed to identify health care concerns that require more immediate attention. Acute and chronic health care issues (including injuries) as well as any mental health concerns (e.g. depression and risk for suicide / self-injury) are identified, and when necessary, the inmate is referred to the appropriate practitioner (physician, psychiatrist, dentist, etc.). Inmates who do not require follow up based on the initial assessment are informed that they can contact health services at any time (see also Questions 19 and 22).

28. At the provincial and territorial level, Newfoundland and Labrador has enhanced medical services by contracting nurse practitioners for correctional facilities. Furthermore, general practitioners, nurse practitioners, psychiatrists, and psychologists are available to assist and support inmates. Should services beyond these be required, inmates are transported to local medical facilities.

29. In British Columbia, all inmates have access to medical staff who provide thorough and impartial treatment to both inmates and detainees. If medical treatment cannot be provided on site, individuals in custody may be transported to the hospital or to specialists in the community as required. In January 2015, British Columbia Corrections formalized its policy that health care services, including medication, are not withheld for punitive reasons or to modify inmate behaviour.

30. Finally, in Quebec, incarcerated persons are entitled to receive comparable health services to those available in the community for similar needs. They can meet with members of the healthcare staff of the detention facility, or may be taken to an external healthcare establishment if necessary.

[7] The detailed directive on health services in federal correctional facilities is available online http://www.csc-scc.gc.ca/lois-et-reglements/800-cd-eng.shtml

**Medical examinations in police custody**

31. The RCMP's national policy for the medical treatment of persons in custody is subject to regular review, with the most recent amendment being in January 2015. The RCMP policies are developed based on national consultations and are intended to assist provinces and territories in the development of their individual policies and procedures for providing medical assistance to persons in custody.

32. RCMP policies make it clear that the RCMP is responsible for ensuring the full protection of persons in their custody and, in particular, that the RCMP is required to take immediate action to secure medical attention whenever required. Any person alleging an injury or illness while in RCMP custody receives a thorough and impartial examination by a licensed doctor or nurse. The medical practitioner is responsible for documenting the examination based on the guidelines of the regulatory body in their jurisdiction (i.e. a College of Physicians or an Order of Nurses).

**Medical examinations in immigration detention**

33. Within the first 48 hours of detention, an individual who is held for immigration-related reasons in a Canada Border Services Agency (CBSA) facility will undergo a general medical examination by a doctor or nurse. The CBSA relies on contracted medical experts to identify behavioural or mental health issues, including information that may point to past torture or ill-treatment, and will engage medical professionals as needed in compliance with appropriate medical protocols. Every detainee has access to medical services. For example, at the Toronto and Laval detention facilities, there are doctors and nurses on-site and after-hours and medical support is available as required. As well, social workers and representatives from non-governmental organizations, such as the UNHCR and the Canadian Red Cross (CRC), visit immigration detainees regularly. Any person alleging an injury or illness while in CBSA custody receives a thorough and impartial examination by a licensed doctor or nurse.

34. The CBSA may transfer an individual with a mental illness to a provincial detention facility which offers access to mental health services. CBSA detainees held in provincial correctional facilities have access to medical care at all times. Each province has its own reporting mechanisms and follow-up/investigation activities regarding any allegations of mistreatment. The provinces are expected to keep the CBSA apprised of any allegations of mistreatment, the investigation and its results. For example, detention facilities in Quebec must offer certain services to incarcerated persons, including health care services (consultations, medical examinations). Otherwise, according to the Regulation under the Act respecting the Quebec correctional system, "an inmate whose state of health so requires must be transferred to a hospital centre" (art. 11) where the necessary health services are offered.

35. The CBSA is revising its national detention standards. New standards will establish expected practices and national consistency in detention areas such as safety, security, detainee care (including mental health), administration, and management. Additionally, the CBSA has recently implemented a new detention training course, which is being provided to all CBSA officers. The online course addresses suicide and self-harm prevention for immigration detainees. The CBSA also provides suicide prevention training to contracted staff responsible for immigration detainees in CBSA immigration holding centres.

## Question 5

### General framework for immigration detention

36. Under the IRPA, CBSA officers have the authority to detain foreign nationals and permanent residents when there are reasonable grounds to believe the person is inadmissible to Canada, and one or more of the grounds for detention exists (most commonly, an individual is a danger to the public or is unlikely to appear for an examination).[8] Officers will only detain an individual where doing so is necessary and proportional in all the circumstances, and they must consider reasonable alternatives to detention when arresting or detaining an individual: for example, reporting requirements, deposits and guarantees.

37. CBSA officials must regularly appear before the Immigration Division of the IRB, an impartial and independent administrative tribunal, to demonstrate that continued detention is necessary. During the review, a CBSA officer must present information to justify the continuation of the detention. The detained individual has the opportunity to make submissions and be represented by legal counsel. The IRB member reviews the case and decides if the individual should remain in detention or be released with or without conditions. At these hearings, the IRB member is required to consider any available alternatives to detention. If the person is not released, the Immigration Division must review the case again within 30 days.

38. There is no formal time limit on immigration detention. However, Canada's Supreme Court has concluded that this lack of an overall time limit does not constitute "indefinite detention," because there is a meaningful process for the ongoing and regular review of detention, taking into account the circumstances of each individual case.[9] The Immigration Division always provides reasons for its decisions, and its decisions are subject to judicial review with leave from the Federal Court. The constitutional safeguards contained in the Charter allow a context-specific assessment of whether an individual's detention has become so prolonged that it is contrary to human rights.

39. Between April 2014 and March 2015, 6,768 individuals were detained by the CBSA. The average length of detention was 24.5 days.[10]

### Designated foreign nationals

40. Bill C-31, the Protecting Canada's Immigration System Act (PCISA), was enacted in 2012. The PCISA does not significantly change the immigration detention regime that applies in the vast majority of cases, and which was explained above. The PCISA provisions affect only a small and exceptional subset of foreign nationals: if the Minister of Public Safety designates an arrival as irregular, certain foreign nationals who entered Canada as part of the group become "designated foreign nationals." Designated foreign nationals who are 16 years or older at the time of arrival are initially subject to mandatory arrest and detention, in order to give border authorities sufficient time to conduct investigations into the identity and admissibility of those who have arrived.

41. There are a number of safeguards to ensure that the initial detention of a designated foreign national continues no longer than is necessary. These include: regular detention

[8] See IRPA, s. 55, http://canlii.ca/t/52hdn

[9] See *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at paras. 95-128, http://canlii.ca/t/1qlj

[10] See online for additional information on immigration detention: http://www.cbsa-asfc.gc.ca/security-securite/detent-eng.html

reviews before the Immigration and Refugee Board; the availability of judicial review at the Federal Court; release from detention at the request of the designated foreign national in exceptional circumstances (with policies to outline what these circumstances could be); and release from detention on the Minister's own initiative if the reasons for detention no longer exist.

42. While there have been some designated foreign nationals subject to this detention scheme, most have been released by the Minister on conditions or have been removed. For a small subset, where there have been concerns about criminality, the Minister has sought continued detention, and this has been authorized by the Immigration Division of the IRB at a detention review. There were no individuals detained under the scheme as of May 11, 2016.

43. Designated foreign nationals are also subject to restrictions that include a five-year ban on applying for permanent residency in Canada, and as a result, a five-year ban on sponsoring family members. These measures are intended to act as a deterrent to those considering human smuggling as a means of coming to Canada. However, Canada continues to respect its non-refoulement obligations under international law by ensuring that eligible asylum seekers, even if smuggled into Canada, receive a fair assessment of the risks they may face upon removal from Canada – either through a refugee claim, or in the case of ineligible claimants, a pre-removal risk assessment (see Question 11).

**Refugee Appeal Division**

44. The PCISA established the RAD, within the IRB. The RAD provides an opportunity for most failed claimants to appeal a negative decision of the Refugee Protection Division. All failed claimants can also apply to the Federal Court for judicial review of the IRB's final decision on their claim.

45. While claimants from designated countries of origin were originally barred from accessing the RAD, the Federal Court of Canada rendered a decision in July 2015 granting these claimants the right to appeal to the RAD. Designated country of origin claimants now have access to the RAD.

46. There is no access to the RAD for some specified groups, such as those who fall under an exception of the Canada-United States Safe Third Country Agreement, claimants who arrive as part of a designated irregular arrival, or those whose claims have been determined to be manifestly unfounded or with no credible basis. Barring access to an appeal for those claimants provides a disincentive to enter Canada via these means and limits the amount of time spent in Canada by claimants with unfounded claims. Nonetheless, these groups have access to judicial review by the Federal Court, and other effective remedial review processes that ensure Canada fulfils its international obligations to prevent refoulement.

## Question 6

47. Canada uses security certificates in exceptional circumstances when a permanent resident or foreign national is believed to be inadmissible to Canada under the IRPA on grounds of security, violating human or international rights, serious criminality or organized criminality, and when classified information is required to establish the individual's inadmissibility. Such information cannot be disclosed, as it would be injurious to national security or endanger the safety of a person. The security certificate scheme establishes a constitutionally fair procedure to balance the protection of classified information with the rights of the individual.

48. Canada's past reports to this Committee have described significant amendments to the IRPA security certificate provisions following a 2007 Supreme Court decision, as well as a court challenge brought by Mr. Harkat to the constitutionality of the amended provisions.[11] In May 2014, the Supreme Court ruled on that challenge, holding that the security certificate regime complies with the Charter.[12] The Court held that the provisions do not violate the affected individual's right to a fair process – to know and meet the case against him or her and to have a decision made on the facts and the law. The Court held that the security certificate regime allows for sufficient disclosure to the affected individual, and that the "judge is vested with broad discretion and must ensure not only that the record supports the reasonableness of the ministers' finding of inadmissibility, but also that the overall process is fair."[13]

49. Currently there are only three individuals who are subject to a security certificate. None are currently in detention; they have all been released on conditions, which were imposed and are regularly reviewed by the Federal Court. First, Mr. Mahjoub's certificate was found reasonable by the Federal Court. He has appealed this decision to the Federal Court of Appeal. Second, in May 2016, the Federal Court found that the security certificate issued against Mr. Jaballah was not reasonable. The Government of Canada is currently reviewing the decision.

50. Finally, in Mr. Harkat's case, in its May 2014 decision, the Supreme Court of Canada found his certificate reasonable; he is inadmissible to Canada on national security grounds, due to his membership in a terrorist organization. The normal removal proceedings were then initiated against Mr. Harkat.

51. Mr. Harkat has recently received an assessment prepared by officials, recommending that he be removed from Canada to Algeria pursuant to the IRPA. That documentation has two main elements: first, it assesses the risks he might face upon return to Algeria; second, it assesses whether he poses a danger to the security of Canada. The next step in this process is the opportunity for the individual to respond in writing. These submissions can address any relevant issues, including the risk faced upon return and any considerations relevant to the security of Canada. All relevant documents, including the individual's response, will be forwarded to the Minister's delegate for a decision on whether he should be removed from Canada. The decision is subject to judicial review.

52. The IRPA includes provisions clarifying the information that may be used as part of security certificate proceedings. Sub-section 83(1.1) confirms that information that is believed on reasonable grounds to have been obtained as a result of the use of torture or CIDTP is not considered reliable and appropriate, and thus cannot be used as part of proceedings. The provision refers to the *Criminal Code* in defining torture (see Question 2) and the Convention in defining CIDTP. This provision was applied by the Federal Court in 2010, in a decision that referred extensively to the views of the Committee against Torture, in particular on the definition of CIDTP.[14] According to the Court's decision, s. 83(1.1) reflects "three propositions: first, information obtained as a result of the use of torture is inherently unreliable; second, the exclusion of such information in court proceedings effectively discourages the use of torture and; third, the admission of such evidence is antithetical to and damages the integrity of the judicial proceeding."

[11] Charkaoui v. Canada (Minister of Citizenship and Immigration), 2007 SCC 9, http://canlii.ca/t/1qljj.

[12] *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, http://canlii.ca/t/g6v7s.

[13] *Ibid.* at para. 46.

[14] *Mahjoub (Re)*, 2010 FC 787, http://canlii.ca/t/2btjw (see para. 66).

## Question 7

53. The intent of the Ministerial Directions (MDs) was to establish a coherent and consistent policy on decision-making processes regarding information sharing where there may be a risk of mistreatment. As the MDs clearly state, Canada neither promotes nor condones the use of torture or other unlawful methods of investigation, and opposes in the strongest possible terms the mistreatment of any individual by any foreign entity for any purpose. The MDs affirm Canada's obligations under the Convention, as well as the relevant provisions of the *Criminal Code* and the Charter. Finally, it should be noted that Canadian law prohibits the use of any statements that are shown to have been made as a result of torture as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (see Question 30).

54. Further to the MD, the Canadian Security Intelligence Service (CSIS) has increased and improved the emphasis on the prohibition against torture in several operational training courses that are regularly offered to employees. These internal training courses ensure that employees are aware of the legal prohibition and of the policy on the decision-making process regarding information sharing where there may be a risk of mistreatment. The updated courses contain a focus on CSIS' adherence to the human rights protections in the Charter and the appropriate handling of information in relation to duress or torture.

## Question 8

55. Canada takes violence against women and children very seriously and is committed to ensuring the safety and security of all women and children in Canada. Violence against women and children is addressed through legal, program and policy responses designed to prevent and reduce its prevalence, to provide health and social assistance to those affected by it, and to hold perpetrators accountable. Canada has committed to develop and implement a comprehensive federal gender violence strategy and action plan.

56. This question, along with questions 9, 10, 24, 31 and 33, deals with violence committed by non-State actors. The definition of torture established by Article 1 of the Convention requires a certain level of State involvement for mistreatment to constitute "torture". Pursuant to Article 1, acts of violence will only constitute "torture" when there is some intentional involvement, including acquiescence, by a public official or other person acting in an official capacity. This requirement is also reflected in Canada's criminal law. Therefore, only in the most exceptional circumstances could violence by non-State actors (e.g., domestic violence) be considered torture within the meaning of Article 1. For example, acquiescence to non-State actor violence might occur if a public official, prior to the violence in question, has subjective and specific knowledge of it but fails to take reasonable preventive measures.[15] Canada does not agree with the broad approach to acquiescence put forward by the Committee at paragraph 18 of its General Comment No. 2 (2008).

57. For comprehensive information on measures taken by Canadian governments to combat violence against women, see Canada's reports under the CEDAW. The following provides a brief overview, with some illustrative highlights from the provincial and territorial level.

[15] For a clear example of acquiescence, see *Hajrizi Dzemajl et al. v. Yugoslavia*, CAT Communication No. 161/2000 (2002) at para. 9.2.

**Measures to address violence against women and children**

58. Canada's *Criminal Code* provides a comprehensive criminal justice response to all forms of violence against women, including domestic violence. Offences of general application including uttering threats, assault, sexual assault, homicide, forced marriage and criminal harassment can be used to respond to acts of domestic violence. In addition, courts must consider, as aggravating factors for sentencing, whether in committing the offence the offender abused their spouse or common law partner. Recent amendments to the *Criminal Code* have strengthened the weapons prohibition provisions for violent offences that occur against an intimate partner or family member.

59. Provinces and territories have implemented criminal justice responses to better address the needs of domestic violence victims and offenders, through measures such as pro-charging and prosecution policies, to ensure that domestic violence cases are treated with the same rigour as stranger violence cases. Ten jurisdictions have specialized domestic violence courts, which are designed to facilitate intervention in domestic violence cases, and provide a focal point for victims' services and offender treatment programming.

60. Other laws in Canada (including those related to family law and child protection, immigration, and family homes and matrimonial interests on reserves) have specific safety-related provisions that take into account the occurrence of domestic violence. Moreover, specific civil domestic violence legislation is available in ten provinces and territories in Canada. It ensures access to protection and redress for victims by providing for short term emergency protection orders and other civil restraining orders.

61. A variety of victims' services and programs also address domestic violence, including police-based and compensation programs, and where appropriate, specialized programs that provide culturally-appropriate responses in cases of domestic violence involving Aboriginal victims and offenders.

62. For example, the Government of Saskatchewan is developing a new transition house, and, in 2015-16, seven sexual assault services that focus on direct support for victims and survivors received a 22% funding increase. In addition, the Northern Transportation and Support Initiative is being implemented to increase access to places of safety, and provide transitional support for residents of northern Saskatchewan who are fleeing interpersonal violence and abuse.

63. In 2015-16, the Government of Newfoundland and Labrador established a Family Violence Intervention Court in St. John's, Newfoundland. Additionally, a pilot technology-assisted Family Violence Intervention Court became operational on the west coast of the island portion of the province. A commitment has been made to develop a culturally and regionally tailored court model. This will require further consultation with Indigenous communities and stakeholders. Finally, the Government of Newfoundland and Labrador's Victims of Violence Policy provides all residents of the province with short term emergency support to leave a violent situation.

**Statistics on spousal and intimate partner violence**

64. The Committee requested disaggregated data on complaints of domestic violence, and the criminal justice response. The primary sources for this kind of data are statistical studies of self-reported victimization, and reports of crime that have come to the attention of police. The most recent report was publicly released in January 2016.[16]

[16] Statistics Canada, "Family violence in Canada: A statistical profile, 2014", http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14303-eng.pdf

65. Self-reported spousal violence has been declining in Canada in recent years. In the provinces, the percentage of individuals who had reported being the victim of spousal violence within the preceding five years declined from 7% in 2004, to 4% in 2014. In the territories, the rate remained relatively stable at 12% in 2014, and 10% in 2009.[17] While equal proportions of men and women self-reported being victims of spousal violence during the preceding 5 years, there were notable differences in the severity of violence experienced. For instance, women were twice as likely as men to experience being sexually assaulted, beaten, choked or threatened with a gun or a knife.

66. The majority of spousal violence incidents (70%) were not reported to police, while approximately 19% of victims contacted the police themselves. Ten percent reported that the police became aware of the violence in some other way. Two-thirds of spousal violence victims whose abuse had been reported to the police were satisfied with how the police handled their situation.

67. In 2014, the most recent year for which data are available, there were 88,688 cases of police-reported intimate partner violence (IPV),[18] including 68,348 incidents of physical assault, and 2,693 sexual offences. This represented a rate of 301.1 incidents per 100,000 population, compared to 310.3 in 2013.[19] Females were disproportionately represented among victims of police-reported IPV (a rate of 469.1 compared to 129.3 for men). Overall, rates were significantly higher in the territories than in the provinces. The highest was in Nunavut (3578.0), while the lowest was in Prince Edward Island (207.6).

68. Canada is not in a position to provide the data requested on prosecutions, convictions, and sentencing for domestic violence. Information on criminal proceedings in Canada is collected through the Integrated Criminal Court Survey, which collects information on criminal charges as processed by courts. However, the Survey does not collect data on victims (such as gender or ethnicity), or on the relationship between the victim and accused. The above-noted report on family violence provides the most comprehensive picture on this issue.

## Question 9

69. Canada's criminal laws specifically prohibit human trafficking regardless of whether the trafficking occurs wholly within Canada, or it involves the bringing of persons into Canada.[20] *Criminal Code* offences of general application may also be applicable to human trafficking cases. Recent (2014) prostitution-related law reform is intended, among other things, to reduce the incidence of human trafficking for sexual exploitation. New provisions include an offence prohibiting the purchase of sexual services.[21]

[17] Statistics Canada, "Criminal victimization in the territories, 2014", http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14470-eng.htm

[18] Refers to violence against spouses and dating partners in current and former relationships, regardless of the living arrangements.

[19] Statistics Canada, "Family violence in Canada: A statistical profile, 2013", http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14114-eng.pdf.

[20] *Criminal Code*, ss. 279.01, 279.011, 279.02(1) and (2), 279.03 (1) and (2); IRPA, s. 118(1).

[21] *Criminal Code*, s. 286.1 (came into force December 6, 2014).

70. In June 2012, the Government of Canada launched the National Action Plan to Combat Human Trafficking,[22] which outlines efforts to address this crime. Canada has taken key steps to implement the National Action Plan, including:

- Launching a national public awareness campaign on domestic sex trafficking of Aboriginal peoples living on and off reserve, and in rural, urban and northern communities;
- Providing funding to a number of international organizations and non-governmental organizations that work with governments to address human trafficking, with a core focus on prevention, protection and rehabilitation of trafficking victims; and
- Launching an RCMP Human Trafficking Unit, which works closely with the CBSA on human trafficking investigations and various related initiatives. This 17 member team, based in Montreal, has conducted 5 investigations and obtained 1 conviction, with 1 file before the courts.[23]

**Measures to support victims of trafficking**

71. Border officials are trained to identify possible victims of human trafficking, and information is made available to potential victims at Ports of Entry. Suspected victims may also be given a temporary resident permit, to allow them to consider their options and receive assistance. Victims of human trafficking can benefit from a broad range of social programs such as universal health care, emergency housing, legal aid and social assistance. These are generally administered at the provincial/territorial levels.

72. Through its Women's Program, Status of Women Canada has supported a number of projects which are addressing the trafficking of women and girls for the purpose of sexual exploitation. These projects involve collaborative work with women and community stakeholders such as law enforcement agencies, shelters, legal and medical services, to develop and implement integrated prevention and response strategies to address trafficking and enhance services for victims.[24]

73. At the provincial and territorial level, Newfoundland and Labrador revised its Victims of Violence Policy in 2013, granting priority status for social housing to victims of family violence, and those who have been exploited through human trafficking and/or sex work who are seeking support to exit. Victims of violence are eligible for special priority during the application for housing, transfer of housing, or for special maintenance such as lock changes. This policy supports victims of human trafficking who intend to separate from their abuser and remove themselves from a violent living arrangement or life circumstance.

74. The Manitoba Human Trafficking Response Team comprises representatives from government and non-government organizations. The Team meets quarterly to review cases, collaborate and share resources in an effort to meet the needs of victims of trafficking and address gaps in service delivery.

75. Finally, Alberta provides funding to community agencies directly addressing the needs of human trafficking victims, including ACT Alberta, Stratheona Shelter Society, and

[22] http://www.publicsafety.gc.ca/cnt/rsrces/pblctns/ntnl-ctn-pln-cmbt/index-en.aspx

[23] For more information on measures taken under this initiative, see the 2014-15 Annual Report on Progress under the National Action Plan: http://www.publicsafety.gc.ca/cnt/rsrces/pblctns/ntnl-ctn-pln-cmbt-prgrss-2015/index-en.aspx

[24] For more information, see http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Mode=1&billId=6503398&Language=E

the Centre to End All Sexual Exploitation (CEASE). In collaboration with criminal justice and community partners, and under the guidance of Alberta's Justice and Solicitor General Victims Services, ACT has developed a multi-stakeholder human trafficking protocol to provide service to victims.

76. BC's Action Plan to Combat Human Trafficking 2013-2016 has guided coordinated efforts by the BC provincial government to prevent and address human trafficking, working with key stakeholders such as police, service providers, teachers, Indigenous organizations and First Nations. Likewise, BC's Office to Combat Trafficking in Persons develops and coordinates BC's strategy to combat human trafficking, and has been recognized as a unique response in Canada.[25]

## Question 10

77. Statistics from January 2012 to August 2015, where available, are listed below. Please refer to Annex I of this report for more detailed statistical information.

### Offences, Prosecutions and Convictions for Human Trafficking

78. In total there were 212 cases of human trafficking, and 304 accused persons. To illustrate sentences imposed, in British Columbia, there have been two convictions for human trafficking since 2012. One was for sexual trafficking in *R. v. Moazami*, and one was for labour trafficking in *R. v. Franco Orr*.[26] In *Moazami*, a two year sentence was imposed for the human trafficking conviction, as part of a global sentence of 23 years. In *Orr*, the conviction was overturned by the British Columbia Court of Appeal and a second trial was held in June 2016. The decision is pending.

79. In 2013, Ontario concluded its prosecution of a large, international labour trafficking case, Canada's largest human trafficking investigation since the *Criminal Code* offence came into effect. In total, 20 trafficking victims were identified by police and eleven persons pleaded guilty to conspiracy to traffic in persons and other trafficking-related offences. The longest sentence imposed was for the equivalent of nine years imprisonment.

### Victims of Human Trafficking

80. In total, there were 285 recorded victims of human trafficking in Canada during the reporting period, including 256 cases of domestic trafficking. However, human trafficking is underreported, and these statistics should not be taken as a true representation of its prevalence in Canada.

## Question 11

### Principle of non-refoulement

81. The Government of Canada takes its non-refoulement obligations under Article 3 of the Convention seriously. These obligations are implemented in domestic law, including for the purposes of determining who is a "person in need of protection" under the IRPA (see

[25] More information on BC's response to human trafficking can be found here: http://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/about-us.

[26] *R. v. Moazami*, 2015 BCSC 2055, http://canlii.ca/t/gm1nb; *R. v. Orr*, 2015 BCCA 88, http://canlii.ca/t/gghk7.

sections 97 and 115). Non-Canadian citizens who are identified as facing a risk of torture, a risk to life or a risk of cruel or unusual treatment or punishment can be recognized as persons in need of protection and, generally, can apply to remain in Canada permanently. This can occur as a result of a refugee claim heard by the Immigration and Refugee Board or as a result of a pre-removal risk assessment carried out by an immigration officer. Each of these administrative processes is subject to judicial review by the Federal Court.

82. Subsection 115(2) of IRPA establishes two narrow exceptions to the principle of non- refoulement. These exceptions are intended to reflect Article 33 of the Refugee Convention. However, these discretionary exceptions need to be applied in accordance with the human rights protections guaranteed by the Charter. The Supreme Court of Canada has found that section 7 of the Charter, interpreted in light of the Convention, the ICCPR and other international human rights instruments, generally prohibits deportation to death, torture, or other similarly serious violations of human rights. However, the Court has left open the narrow possibility that in "exceptional circumstances," the Minister may remove a person if the serious threat the person poses to the security of Canada outweighs the risk that person would face if removed.

**Diplomatic assurances**

83. Diplomatic assurances are relied upon rarely by Canada to mitigate risks that individuals would otherwise face upon deportation or extradition. Canada's immigration and extradition laws allow for rigorous scrutiny of assurances' sufficiency by executive and judicial decision-makers. Assurances are disclosed fully to the individuals concerned. Where an individual is being removed or extradited from Canada, any diplomatic assurances received will be one component of the case-by-case assessment of risk faced by the individual in the receiving state.

84. Since May 2012, Canada has not sought any diplomatic assurances from other states in relation to an immigration removal. Immigration removals are carried out following the relevant processes and legal provisions, including the individualized risk assessments and the principle of non-refoulement described above.

85. Since May 2012, Canada has sought diplomatic assurances in 23 extradition cases. In most of these cases, the assurance(s) involved either protection against the death penalty, or protection against being prosecuted for offences not covered by the surrender order (specialty protection). Canada has never extradited an individual who faced a substantial risk of torture post-surrender.

86. In 11 extradition cases since May of 2012, assurances relevant to the specific treatment of the individual were sought. These included: that the requesting country would take reasonable steps to ensure the person's safety while in detention, that the person would not be removed by the requesting country to a specific third state, that the person would have access to counsel within a reasonable period of time, that the person would be provided with needed medical care while in detention, and that timely consular access would be provided.

87. In negotiating diplomatic assurances in a particular case and assessing mechanisms that may mitigate risk, Canada looks to comments provided by this Committee and other UN mechanisms, to the decisions of Canadian courts, and decisions from other jurisdictions (e.g., the United Kingdom and the European Court of Human Rights). Whether a post-return monitoring arrangement is necessary and, if so, what might constitute an effective mechanism is also highly case-specific. In general, assurances are received in the form of a diplomatic note addressed to Canada from the receiving state.

88. Whether the assurances provided in a particular case are sufficiently reliable to address an identified risk is evaluated in a context dependent manner. A recent decision by

the British Columbia Court of Appeal, in the extradition context, is an example of robust judicial review of assurances in a specific case.[27] The Supreme Court of Canada has provided guidance on the use of diplomatic assurances, indicating that assurances regarding the death penalty "are easier to monitor and generally more reliable" than assurances regarding the use of torture, and indicating relevant factors for assessing the reliability of assurances.[28]

**Monitoring of detainees in Afghanistan**

89. Under the Supplementary Arrangement for the Transfer of Detainees signed on May 3, 2007, the Government of Afghanistan provided Canada full and unrestricted access to detention facilities holding Canadian-transferred detainees. Canada signed an arrangement with the United States on November 18, 2011 that provided the same access to detainees transferred by Canada into US custody at the Detention Facility in Parwan. Under Canadian policy, monitoring visits commenced shortly after a detainee's transfer to Afghan or US custody and concluded after their sentencing or their release from custody. The last Canadian-held detainee was transferred on November 30, 2011, and Canada completed all monitoring responsibilities on April 23, 2014. In total, Canadian officials conducted 442 visits to Afghan and US detention facilities. Of these, 29 visits occurred after May 1, 2012. No Canadian-transferred detainees interviewed during this period alleged mistreatment during private interviews.

## Question 12

90. The Committee's question referred to several individual communications to the Committee under Article 22 of the Convention. In order to respect the confidentiality of the individual complaint process, Canada will answer any questions on specific cases via that process.

91. More generally, since accepting the individual communications process in 1989, Canada has been strongly committed to engaging in good faith with this important procedure. Canada receives a significant number of communications with a request for interim measures. As of 1 May 2016, Canada had 40 active communications before the Committee, in the sense that final views were still pending. Thirty-five of these communications involved interim measures.

92. Although the Committee's views and interim measures requests are not legally binding in international or domestic law, Canada always gives them careful consideration. Canada has accepted the Committee's views in the majority of communications, and in a majority of cases has respected the Committee's requests for interim measures.

93. On occasion, Canada has not agreed with the Committee's views, and has removed an individual despite an interim measures request or negative final views. Typically, such removals have occurred when fair and impartial domestic processes have clearly concluded that the individual facing removal from Canada would not face a real and personal risk of irreparable harm, and yet the Committee has nevertheless requested Canada to refrain from removing the individual. Decisions to remove an individual despite an interim measures request or negative final views are not taken lightly. Established procedures are in place to ensure that all relevant information and considerations are before senior government

[27] *India v. Badesha*, 2016 BCCA 88. The Government of Canada has applied to the Supreme Court of Canada for leave to appeal this decision.

[28] *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paras. 123-125.

officials before a decision is made. Canada wishes to emphasize that it takes seriously its Convention obligations in the removals context.

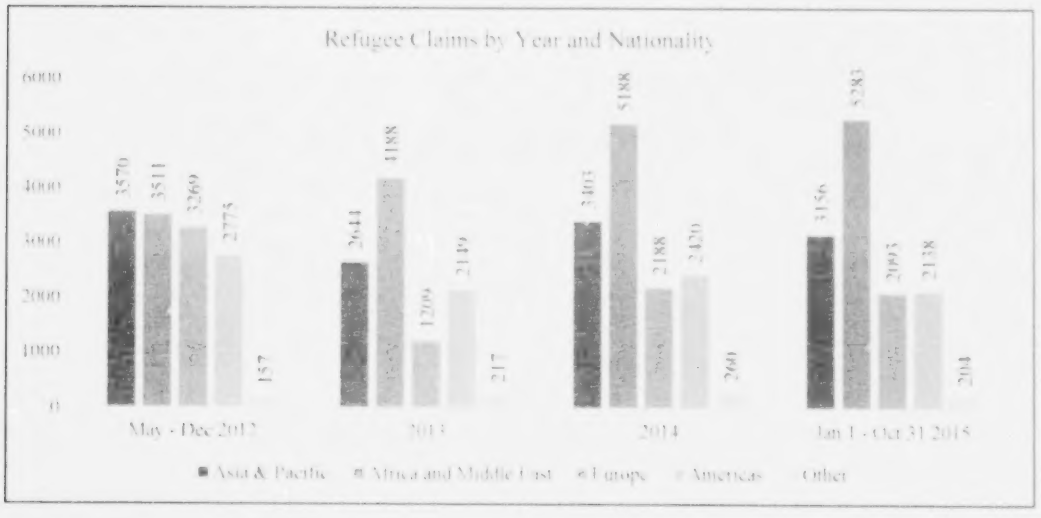
94. Canada has observed with some concern that the Committee has been making interim measures requests with increasing frequency. Canada notes that it often takes several years for the Committee to consider a case and issue final views, meaning that in practice, interim measures requests may be in place for a considerable time. Canada appreciates that interim measures requests may be an important means by which fundamental human rights may be protected from immediate and irreversible harm, pending the Committee's consideration of a case. However, such requests ought to be reserved for only *prima facie* meritorious cases. In circumstances where fair and impartial domestic decision-makers have directly considered all of the evidence and concluded that an individual's allegations of risk are unfounded, the fact that the author faces removal to a country with a generally problematic human rights record is not by itself adequate for the maintenance of an interim measures request.

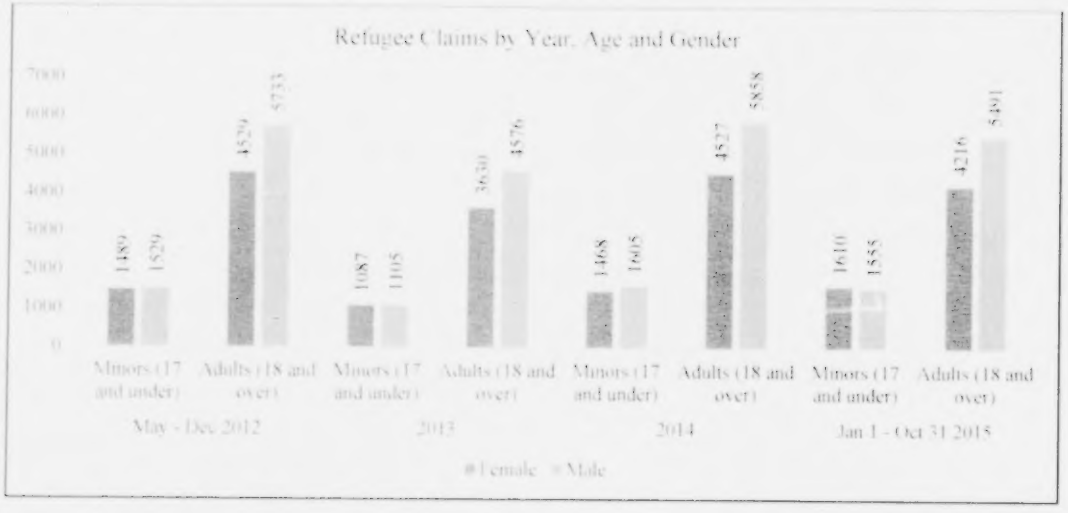
## Question 13

### Statistics on asylum requests

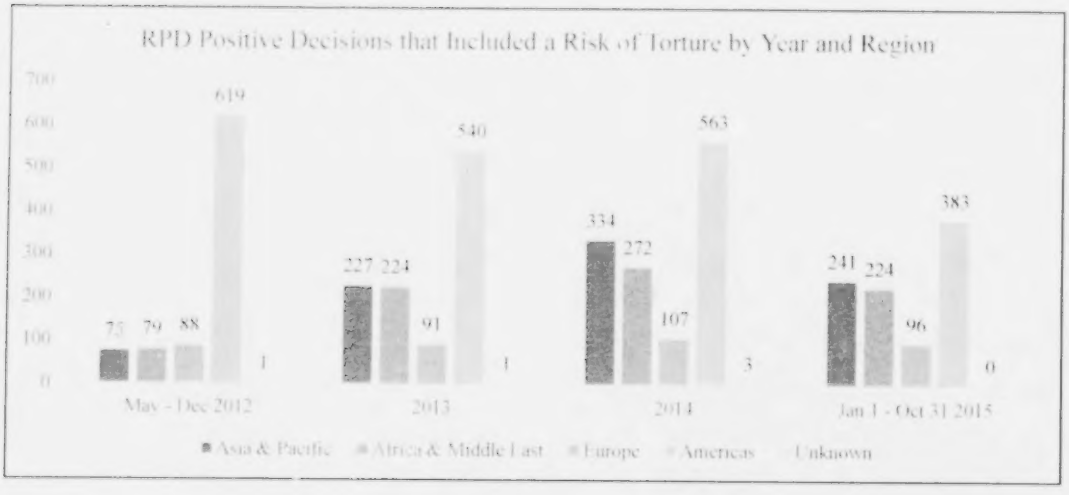
95. In parts (a) and (b) of this question, the Committee requested disaggregated data on "the number of asylum requests registered and approved" and "the number of asylum seekers whose requests were granted" on the basis of a risk of torture upon removal to the country of origin. The following are relevant statistics for the reporting period, from May 2012 to October 31, 2015. More detailed statistical tables are available in Annex 1. Canada has limited the disaggregation of the data, so as to protect the privacy and safety of individuals who have been removed.

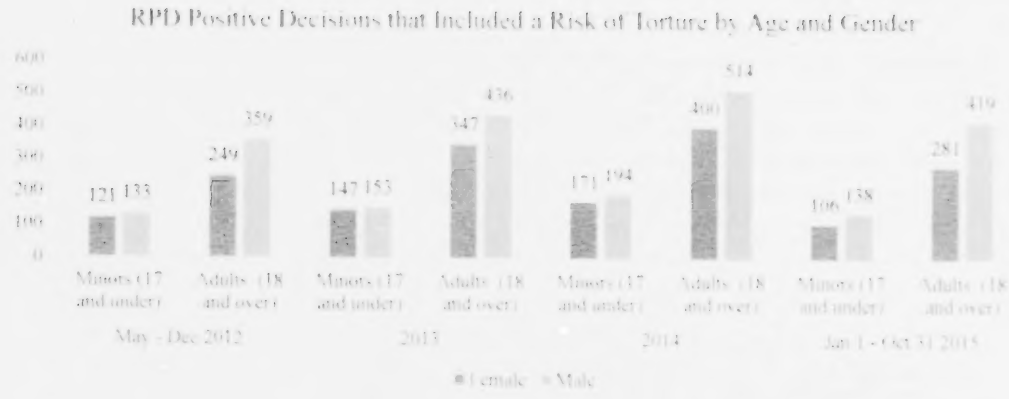
### Response to Question 13(a)






**Response to Question 13(b)**



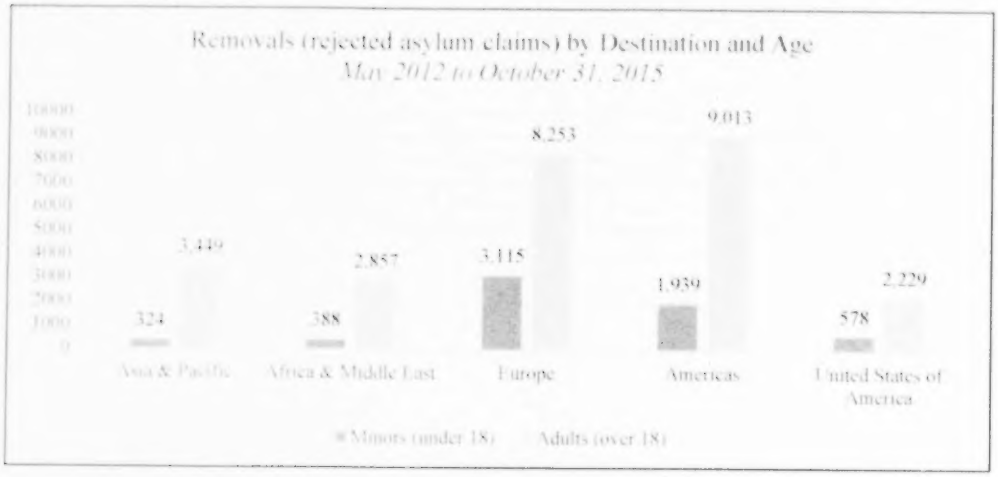



**Statistics for removals**

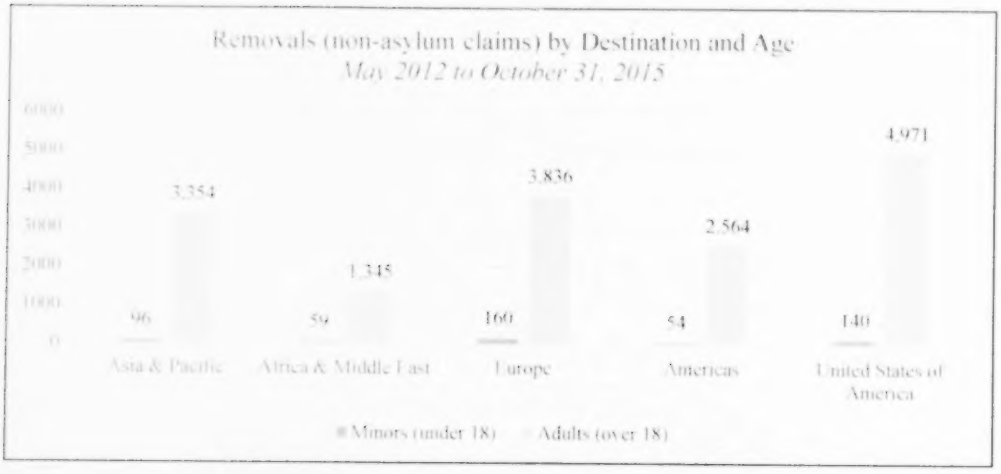
96. In part (c) of this question, the Committee requested disaggregated data on the number of immigration removals carried out during the reporting period, and the destination countries. From May 2012 to October 31, 2015, a total of 48,724 individuals were removed from Canada. Of these individuals, 32,145 had made an asylum claim that was rejected via the individualized assessment processes described above. Over 80% of the individuals removed during this time were adults.

97. Disaggregated by destination region, the totals were as follows: Europe (15,364), United States of America (7,918), all other countries in the Americas (13,570), Asia & Pacific (7,223), and Africa & Middle East (4,649). More detailed disaggregated statistics are provided below, in relation to the number of removals conducted by Canada from May 2012 to October 31, 2015. Full statistical tables are available in Annex 1.

98. For individuals whose asylum claim had been rejected, the removals statistics are as follows:




99. For individuals who had not made an asylum claim, the removals statistics are as follows:




**Further information on removals**

100. The IRPA specifies that foreign nationals may be inadmissible (and thus removed from Canada) for any of the following reasons: security; crimes against humanity and war crimes; criminality; organized crime; risk to health of Canadians or excessive demand on health services; misrepresentation; inability to financially support oneself or one's dependents; and non-compliance with the act (e.g., overstaying the time an individual is permitted to remain in Canada).

101. When a foreign national is found to be inadmissible and a removal order is issued, the CBSA has a statutory obligation to enforce the removal as soon as possible. Removals are prioritized based on a risk management regime, with cases involving national security, organized crime, human rights violations and criminality being the highest priority for the safety and security of Canada. Failed asylum seekers are prioritized to support the integrity of the immigration and refugee determination system. All other immigration violations are considered a lesser priority.

102. The majority of removal cases are individuals who are not criminals, but rather refugee claimants whose claim for asylum has been rejected. To provide a snapshot of Canada's immigration removals, 11,835 individuals were removed from Canada in the fiscal year 2014-2015. Of these individuals, 7002 (59%) were rejected asylum seekers. The top 5 receiving States in 2014-2015 were as follows:

| | *Total number of individuals removed* | *Number of rejected asylum seekers* | *Percent of individuals removed who were rejected asylum seekers* |
|---|---|---|---|
| U.S.A. | 2192 | 766 | 35% |
| Hungary | 1060 | 983 | 93% |
| Mexico | 770 | 618 | 80% |
| China | 494 | 262 | 53% |
| Croatia | 397 | 382 | 96% |

## Questions 14, 15, and 16

### Extradition and the offence of torture

103. Canada has entered into 51 bilateral extradition treaties. Canada has also designated 30 countries and three international organizations as extradition partners under the *Extradition Act*.

104. The torture offences described in Article 4 of the Convention are extraditable where recognized as criminal in the requesting country. Under Canadian law, in order to consider extradition, Canada must first determine whether two fundamental criteria are met: (1) the conduct underlying the extradition request must be recognized as criminal by both countries (double criminality requirement); and (2) the conduct must be punishable, in each country, by a specified term of imprisonment. The relevant extradition treaty generally sets out the penalty requirement (e.g. the conduct must be punishable in both countries by imprisonment for a term exceeding one year). If the treaty does not specify, the *Extradition Act* provides that extradition is possible for offences that are punishable by imprisonment for a maximum term of two years or more.

105. Canada has not received any extradition requests involving the offence of torture in the reporting period.

### Mutual Legal Assistance and Torture-Related Offences

106. Canada has entered into 35 bilateral mutual legal assistance treaties. Canada is also party to 24 multilateral conventions with provisions for mutual legal assistance. In addition, the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are designated under the *Mutual Legal Assistance in Criminal Matters Act* as entities that may obtain court-ordered assistance from Canada to further their investigations and prosecutions.

107. In the reporting period, Canada has received nine requests for mutual legal assistance related to allegations of torture (committed abroad by non-Canadian actors), and has, to date, executed the first five listed below.

- A request was received for the taking of statements, and testimony of witnesses located in Canada, with respect to allegations of physical and psychological torture of civilians by a military group. Canada obtained and provided the statements and testimony sought.
- A request was received for information on the status of an extradition request made to Canada by a third country concerning one of the alleged perpetrators of torture, in a case involving the alleged murder and torture of over 200 people, including women and children, by military forces. Canada provided the information sought.
- A request was received for a witness interview by videoconference and the service of a summons, in a case involving murder and torture of civilians by an intelligence agency. Canada provided the assistance sought.
- A request was made for witness interviews in a case involving torture of civilians by a militia group. Canada arranged the interviews and the statements were provided to the requesting country.
- A request was made for witness interviews in a case involving torture of civilians by a military group. The request was executed.
- A request was received for a voluntary statement of a witness located in Canada, in a case involving state complicity in torture, ill-treatment and inhuman and degrading acts against civilians. Canada was unable to execute the request, owing to a security risk to the witness.
- A request was received to locate a suspect, and identify, trace and seize assets of the suspect, in a case involving torture of civilian detainees by military and militia groups. Canada was unable to assist as neither the suspect nor any of suspect's assets were located in Canada.
- A request was made for access to records in the possession of Canadian government in a case involving torture by armed forces against a civilian population. This case is pending.
- A request was made for access to court records in a case involving torture of members of a religious group by government leaders. This case is pending.

## Question 17

### RCMP training

108. The RCMP is responsible for the well-being and protection of persons in its custody. There is significant operational policy and training for the handling of prisoners that is directed towards the police officers, supervisors and guards.

109. The RCMP Cadet Training Program includes instruction on the care, handling and escorting of detainees and arrestees in consideration of the C rter, the Criminal Code, case law, national policy, and best practices. The knowledge and skills acquired by cadets are built upon the pillars of CAPRA (the RCMP community policing problem-solving model), the IMIM (the RCMP useof force model), and the RCMP's Core Values. Cadets are assessed informally and formally on their abilities in relation to the care, handling and escorting of detainees and arrestees at numerous points through training. The curriculum for the Cadet Training Program is managed by a dedicated unit which reviews the material on a

continuous basis, to ensure it supports the role and responsibilities expected from a General Duty Constable.

**Examples of police training at the provincial level**

110. In Ontario, training at the Ontario Provincial Policy Academy emphasizes respect for human rights, as required by the Ontario Human Rights Code and the Charter. Basic Constable Training provided to all officers through the Ontario Police College emphasizes human rights principles. Recruits demonstrate comprehension of federal laws during practical sessions on a variety of topics, including powers of arrest, the justice system, types of laws, discretion, search and seizure, and the use of force.

111. As part of their training in colleges and at the Quebec National Police Academy, future police officers receive theoretical and practical instruction on the National Use of Force Model. Police recruits are taught that the decision to use force is the result of a situational analysis, subject behavior, perception, and tactical considerations. Police are certified in de-escalation, tactical communication and response, physical intervention, and use of force options ranging from communication to firearm usage. The training places significant emphasis on ethics, wherein officers must conduct themselves in accordance with the principles set out in both the *Quebec Charter* and the *Canadian Charter of Rights and Freedoms*.

112. Saskatchewan's municipal police services follow the National Use of Force Model taught at the Saskatchewan Police College. This model represents the processes by which an officer assesses, plans and responds to evolving situations that threaten public and officer safety. It also serves as a basis for delivering use of force training to prevent unauthorized or excessive use of force occurrences. Members of municipal police services frequently review use of force guidelines and recertify Use of Force Options. Members of municipal police services will have reviewed the Model six times over a three year period.

**Canadian Armed Forces training**

113. Members of the Canadian Armed Forces (CAF) are given legal education, at various stages of their careers, that includes Canada's obligations under the Convention. During basic training, all CAF members are introduced to international humanitarian law (IHL) and international human rights law. They are then taught the CAF Code of Conduct, which is a synthesis of key IHL principles: Rule 6 states that "any form of abuse, including torture, is prohibited", and such abuse is a service and criminal offence. The Code refers explicitly to the Convention. For officers, this initial training is augmented by an IHL module in the CAF Junior Officer Development Program, which is mandatory for promotion. Later in their careers, senior non-commissioned members and officers are eligible to attend the Intermediate Law of Armed Conflict course, a week-long course with lectures and discussions on, *inter alia*, Treatment of Civilians and Detainees. CAF members who are responsible for intelligence receive additional training on the applicable law related to their particular responsibilities.

114. Certain members in high readiness positions receive regular pre-deployment training that includes critical modules on the CAF's legal obligations. Specific occupational requirements vary. For example, Legal Officers receive more detailed training.

## Question 18

115. Respecting the principle of judicial independence, Canadian judges access training primarily through independent judicial education institutions, such as the National Judicial Institute (NJI). The NJI was created in 1988 and is dedicated to developing and delivering judicial education in both official languages to judges throughout Canada.

116. Through its criminal law suite of programmes, the NJI offers training on matters related to the prevention of torture and other mistreatment. In the general Criminal Law seminar, there will be from time to time, segments on the limitations of police powers, the power of arrest and detention, *habeas corpus*, and sentencing. The NJI also offers a course entitled "Justice and Jails", a weeklong program that takes place in a region of Canada where there are a variety of correctional facilities, such as Kingston, Ontario. As part of the program curriculum, judges visit the institutions, speak with inmate committees, and attend a parole hearing. The facilities visited include maximum and lower security facilities, as well as facilities for the mentally ill.

117. Federal prosecutors receive regular training through various in-house training courses, including the School for Prosecutors (SFP), administered by the Public Prosecution Service of Canada (PPSC), as well as training from outside providers such as provincial or territorial law societies, law schools and private companies. Within the PPSC, in-house lectures, seminars, panel discussions, and workshop sessions are used to enhance prosecutors' understanding of the practice of criminal law. For example, in the SFP's "Prosecution Fundamentals" course for junior prosecutors, there is a day of instruction and discussion on Charter- and human rights-related issues. In 2015, the topics discussed included the right against arbitrary arrest or detention, the limits of police powers of arrest and detention, and the Charter right of detained or arrested individuals to retain and instruct legal counsel without delay. In 2016, a webinar will be offered to all prosecutors on the prevention of wrongful convictions, which will include case studies of problematic police interrogations and false confessions.

## Question 19

### Conditions of detention

118. Overall, with few exceptions, the practices of the Correctional Service of Canada (CSC) meet or exceed the Revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). A core legislative principle is that inmates retain the rights of all members of society except those rights that are, as a consequence of the sentence, lawfully and necessarily removed or restricted. In addition to the relevant constitutional protections under the Charter, federal law specifically prohibits CIDTP of offenders: "No person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender."[29]

119. CSC takes all reasonable steps to ensure the health, safety, and personal dignity of inmates. For example, CSC ensures that every inmate is adequately clothed and fed; provided with adequate bedding, toilet articles, and other articles necessary for personal health and cleanliness; and given the opportunity to exercise for at least one hour every day. The human rights of offenders in federal penitentiaries are monitored by the Correctional Investigator of Canada, a legislated and independent ombudsman.[30]

[29] *Corrections and Conditional Release Act*, s. 69.

[30] More information on the Investigator is online: http://www.oci-bec.gc.ca/index-eng.aspx.

120. The number of offenders in federal institutions has been increasing since March 2010. Between 2010 and 2014, approximately 20 per cent of Canada's federal inmates have been required to double bunk. Double-bunking remains a temporary accommodation that is only used when single occupancy accommodation is not possible. The CSC has been expanding its inmate capacity to address this issue, and by the fall of 2015 there was a net increase of more than 1400 accommodation spaces in federal prisons compared to 2012, with an additional 300 spaces to be occupied by early 2016. With the new units, the percentage of inmates double-bunked is expected to return to the 8-9% range that it was in previous years.

121. At the provincial and territorial level, several provinces, including Prince Edward Island and New Brunswick, have little to no prison overcrowding. Ontario opened two new detention centres in 2014 with a combined capacity of 2,000 beds. Taking into account closings of older facilities, the new detention centres will lead to a net increase of 380 beds. Another new facility, which will house 120 male intermittent inmates (who generally serve their time on weekends), should open in 2016. In 2013, the province of Alberta opened the new 1952-bed Edmonton Remand Centre, which assisted in addressing increasing custody pressures across the province. In addition, Nunavut opened the Makigiarvik Healing Facility in March 2015 to relieve prison overcrowding by adding 48 new beds and programming areas to the Baffin Correctional Centre. Makigiarvik offers rehabilitative programming for inmates such as the On the Land Program, which enables them to reconnect with their cultural identity.

**Prisoners with mental health issues**

122. The Mental Health Strategy for Corrections in Canada, which was the product of an FPT working group, was publicly released in June 2012. FPT governments are now implementing it.[31] In May 2014 the Government of Canada launched its Mental Health Action Plan for Federal Offenders, which focuses on five areas: Assessment, Management, Intervention, Training and Development, and Governance and Oversight.[32]

123. Addressing the mental health needs of offenders is a CSC priority. CSC's Mental Health Strategy outlines the continuum of mental health care provided to federal offenders, including mental health screenings at the time of intake, provision of mental health care during incarceration, and transitional care for release into the community. Since 2007, over 11,100 of CSC's operational and health staff have received training on the Fundamentals of Mental Health. As part of the Strategy, CSC is implementing a refined model of mental health service delivery at all levels of the continuum of care, so that male and female offenders receive mental health services at the level most appropriate to their needs. Under this model, offenders will have access to inpatient psychiatric care and intermediate care within CSC Treatment Centres. For offenders with highly complex mental health needs, CSC is solidifying partnerships with provincial forensic psychiatric hospitals.

124. At the provincial and territorial level, since 2010, Alberta has been increasing the number of dedicated units and staff for addiction and mental health within correctional facilities. This included establishment of mental health units at the two large remand centres in the province, so that patients with significant mental health problems or individuals in crisis have the level of care required. In Nova Scotia, a dedicated Mentally Ill Offender Unit (MIOU), with 24 beds, is operated by the Nova Scotia Health Authority. Staff at the MIOU perform court-ordered assessments and provide treatment to offenders diagnosed with a mental illness.

[31] See online: http://www.csc-scc.gc.ca/health/092/MH-strategy-eng.pdf

[32] See online: http://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/mntl-hlth-ctn-pln-en.aspx

**Administrative and disciplinary segregation**

125. Segregation of prisoners, whether for administrative or disciplinary reasons, is a measure of last resort. Administrative segregation (AS) is a preventive measure, not a punitive one. Inmates can only be placed in AS if one or more of the following circumstances exists: the inmate's safety is at risk, allowing the inmate to associate with other inmates would jeopardize the security of the institution or the safety of other persons, or the inmate would interfere with an investigation that could lead to a criminal charge or a serious disciplinary offence.[53] In all cases, there must be no reasonable alternative and the inmate is to be released from administrative segregation at the earliest appropriate time.

126. The legislation and policies governing CSC establish fair safeguards. Upon placement in AS, inmates are informed without delay of their rights to legal counsel and to lodge complaints and grievances. Within two working days, inmates receive a written explanation. A Segregation Review Board must conduct regular review hearings: within five working days after initial placement, and at least every 30 days after that. Inmates have a reasonable opportunity to present their case to the Board and are advised in writing of the Board's conclusions. The placement and continued detention of an inmate in AS may be challenged by way of the inmate grievance process, by judicial review and by *habeas corpus*.

127. Before placing an inmate in AS, health care professionals are consulted. Procedural safeguards require that all oversight and review of AS decisions take into account the inmate's mental health needs. In December 2014, CSC announced the addition of a mental health professional to the body that reviews segregation placements, and a new requirement that certain offenders with mental health disorders can engage an advocate to assist them in the review process. These were among several responses to the Coroner's inquest on the death of Ashley Smith.[54] The Minister of Justice has been mandated to review the changes to Canada's criminal justice system, outcomes of which should include implementation of recommendations from the inquest into the death of Ashley Smith regarding the restriction of the use of solitary confinement and the treatment of those with mental illness.

128. Disciplinary segregation is available where an inmate is found guilty of a serious disciplinary offence. It can only be imposed by an independent decision-maker, after an oral hearing. At the hearing, the inmate can make submissions and be represented by legal counsel. A sanction of disciplinary segregation is time-limited by law: it may not exceed 30 days for one offence, or 45 days for multiple offences.

129. Inmate segregation in provincial and territorial facilities follows similar principles. In November 2015, British Columbia updated its regulations to remove "mental illness" and "examination of the inmate's mental condition" as explicit grounds for separately confining an inmate. This change clarifies that inmates are only placed in separate confinement when their behavior or circumstances cause concern for their health, safety or the security of the centre.

130. In the Northwest Territories, all cases of segregation are reviewed within 24 hours of placement and on a weekly basis, and inmates are returned to the general population at the earliest opportunity when it does not pose any safety or security threats to do so. The NWT's Corrections Service monitors the name of every inmate in segregation, the type of segregation employed, when the inmate was admitted, and the length of time they have

[53] *Corrections and Conditional Release Act*, S.C. 1992, c. 20 s. 31

[54] See Canada's response to the Coroner's inquest, http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml

been held. Inmates are only kept in disciplinary segregation for up to fifteen days per disciplinary adjudication.

131. Finally, in Manitoba, if an offender is segregated, he or she is personally observed every 30 minutes. The segregation is reviewed no later than seven days after the initial placement and at least every fourteen days thereafter. If the segregated offender has mental health issues, an assigned case manager will have contact with him or her at least every seven days.

**Female inmates**

132. CSC is adopting a number of measures to improve conditions of detention for female inmates, particularly in the area of mental health. For example:

- CSC established a tracking model for women's institutions that recognizes both gender-neutral risks and needs, and gender-specific considerations. The new model will ensure equitable access to rehabilitative services accross all women's institutions.
- In 2013, a National Complex Mental Health Committee was established as an oversight body to facilitate information sharing regarding offenders with the most complex mental health needs.
- In 2014-2015, CSC opened new minimum security units at four of the regional women's facilities. These units have allowed a reduction in double bunking.
- The number of structured living environment (SLE) beds has increased from 8 to 12 at each site, for a total of 60 beds nationally. The SLE is an intervention option for women assigned to minimum and medium security facilities who have significant cognitive limitations or mental health concerns, allowing their health care needs to be met at the regional facilities. CSC's Regional Psychiatric Centre in Saskatoon, Saskatchewan has 20 mental health care beds for women offenders, and CSC has agreements with two external psychiatric hospitals that provide a total of 14 inpatient psychiatric beds for Women Offenders.

133. In 2014, British Columbia opened a new Mother-Child Program at Alouette Correctional Centre for Women (ACCW) to provide women in custody the opportunity to live and bond with their newborns, while still ensuring the health, safety and security of the child. Similarly, in 2012, British Columbia opened a new secure building at ACCW. This 104-cell expansion allows the placement of all female inmates in Metro Vancouver under one roof, increasing access to programming and services specifically designed for women.

## Question 20

134. The Canadian judicial system provides an overarching external and independent mechanism for reviewing complaints about the conduct of law enforcement personnel, where the complaints allege violations of the Charter or other legal protections. In addition, all jurisdictions have external, independent oversight mechanisms or bodies with the specific mandate to receive and investigate complaints regarding the conduct of law enforcement personnel.

135. At the federal level, in 2013 the *Enhancing Royal Canadian Mounted Police Accountability Act* was enacted, to enhance the accountability of the RCMP. The legislation has several aspects relevant to the current report.

136. First, it created the new external and independent Civilian Review and Complaints Commission for the RCMP (CRCC), which replaced the Commission for Public Complaints Against the RCMP. The CRCC can receive complaints from the public about the conduct of RCMP members; undertake reviews when complainants are not satisfied with the RCMP's handling of their complaints; hold hearings or carry out investigations on complaints, independently or jointly with other police complaints bodies; conduct reviews of specified activities; and report findings and make recommendations to the Commissioner of the RCMP and the Minister of Public Safety. It must report annually to Parliament. See Question 25.

137. Second, the 2013 legislation resulted in a framework for investigating serious incidents involving RCMP members, to improve transparency and accountability and promote independent investigation. For example, the framework:

- Empowers independent provincial authorities to determine whether to appoint an external, independent body or police force to investigate serious incidents;
- Mandates that the RCMP request investigation by an independent body, in provinces with no designated authority or where the designated authority does not appoint an independent body or police force;
- Requires mandatory reporting by the RCMP to the CRCC, where an investigative body or police force is not appointed;
- Empowers the CRCC or provincial authorities to appoint an independent observer, when the RCMP is investigating a serious incident involving RCMP members; and
- Empowers another police force or investigative body to request an independent external review, in cases where the RCMP is conducting an investigation of a serious incident.

138. Finally, the 2013 amendments modernized the RCMP's discipline, grievance and human resource management processes, to prevent, address and correct performance and conduct issues in a timely and fair manner.

139. A number of provinces and territories have also taken measures within the reporting period to strengthen these mechanisms. British Columbia established the Independent Investigations Office in September 2012 (see Question 26). In 2013, Quebec passed the *Act to amend the Police Act as concerns independent investigations*, which establishes an Independent Investigation Bureau (IIB) designated to investigate cases where, in the course of a police operation or during a detention by police force, a person other than a police officer on duty either dies, suffers a severe injury, or is injured by a firearm used by a police officer. Once the investigation concludes, the IIB's report is provided to the Director of Criminal and Penal Prosecutions who decides whether criminal charges are warranted. In the case of a death, the IIB submits the same report to the Coroner's Office once the Director has made the decision whether or not to accuse the police officer. The IIB may also make recommendations to Quebec's Minister for Public Safety on any matter relating to its mandate.

140. Alberta's Serious Incident Response Team (ASIRT) has been operational since 2008. The ASIRT is an independent investigative body that may investigate a citizen's complaint or allegation of criminal ill-treatment and/or excessive use of force by police members. Through a 2011 agreement between Alberta and the Government of Yukon, external investigations of serious incidents in the Yukon are also carried out by the ASIRT. In the event of such a serious incident in Yukon, a protocol requires the appointment of a local community liaison. This protocol was drafted in consultation with community partners, including the Council of Yukon First Nations, Kwanlin Dun First Nation, and the Women's Coalition.

141. Where warranted, Crown prosecutors have exercised their independent prosecutorial discretion to criminally charge police officers for the use of excessive force. For example, Constable James Forcillo of the Toronto Police Service was found guilty in January 2016 of attempted murder for the shooting of Sammy Yatim.

## Question 21

### G20 Summit

142. The G20 Summit in 2010 was an unprecedented event for all levels of government. The Government of Ontario acknowledges that it could have done a better job communicating with the public about the Public Works Protection Act (PWPA), which dated from 1939 and was in effect during the G20 Summit. Following the G20 Summit, a former Ontario Chief Justice was appointed to conduct an independent, detailed review of the PWPA. Following the recommendations of the review, the PWPA was repealed, and new legislation was passed in 2014. This legislation provides for more modern and focused security at specific types of public infrastructure (courthouses, nuclear facilities, and large electricity generating stations), while safeguarding human rights.

143. Additional independent reviews and investigations regarding the G20 Summit have outlined recommendations concerning how police procedures and policies can be improved. These have included the Toronto Police Services Board's Independent Civilian Review (ICR), and a report by the Office of the Independent Police Review Director. Ontario has developed and amended policies to fully implement 34 ICR recommendations, and continues to work with its partners on how to address the remaining recommendations.

### Tyendinaga

144. The Ontario Ministry of Community Safety and Correctional Services seeks to maintain good relations between police and First Nations communities, and to support the approach of the Ontario Provincial Police (OPP) in peacefully resolving public order events. The Ministry, however, does not direct, or interfere with, police operational matters. There are no plans for a formal review of OPP actions at Tyendinaga. The OPP consistently reviews its internal policies, procedures and operations to ensure they are best meeting the needs of the public and the police service.

## Question 22

145. Several tools are used by CSC to screen incoming inmates for physical and mental health conditions. First, inmates are assessed by healthcare professionals within 24 hours for their physical condition and acute mental health needs, and within 14 days for general mental health needs.

146. Then, as a supplement to these in person interviews to determine mental health needs, inmates are also assessed by a computerized mental health screening system within 14 days of intake. This self-administered computerized system comprises a questionnaire and four subtests.[35] An algorithm identifies offenders who likely require mental health services. In fiscal year 2014-2015, approximately 92% of newly admitted offenders were screened by the computerized system. Of these, 27% were flagged as needing further

[35] The four subtests are the Brief Symptom Inventory, General Ability Measure for Adults, Depression, Hopelessness and Suicide Scale, and Adult Self Report Scale for Attention Deficit Hyperactivity Disorder.

mental health assessment, and 95% of the offenders flagged received further mental health service.

147. Provincial correctional facilities also have mental health screening in place. For example:

- In British Columbia, all those admitted to provincial correctional centres receive mental health screening within 24 hours, using the Jail Screening Assessment Tool. Based on the results, inmates may be referred to appropriate health professionals. In addition, each correctional centre in British Columbia has a mental health liaison officer with specialized training in mental health issues.
- The Yukon Complex Needs Pilot Project is a client-centred model of case management for inmates with mental health issues. Part of the project includes the administration of a new screening instrument, in conjunction with mental health screening, upon admission. If the screening tool indicates that further assessment is needed, a referral will be made to a psychologist.
- In Manitoba, all those admitted to or transferred to correctional centre are assessed by Health Service staff for general health and psychiatric needs, as well as suicide history and risk. The mental health of inmates is monitored through ongoing case contacts and behavioral observation. Concerns resulting from either process may result in referral to Health Services for further assessment.

## Question 23

148. Question 24 will describe measures taken across Canada to address the issue of missing and murdered Indigenous Aboriginal women and girls. This response will focus on measures taken in British Columbia.

149. Since the release of the Missing Women Commission of Inquiry Report in November 2013, the Government of British Columbia has continued to implement its recommendations. Key actions taken in spring 2014 include the establishment, by the province, the Government of Canada and the City of Vancouver, of a Compensation Fund to offer $50,000 in compensation to each of the living, biological children of the 67 women identified in the MWCI Report.

150. In addition, British Columbia has finalized Provincial Policing Standards on missing persons investigations, with input from police-and non-police stakeholders through the standing Advisory Committee on Provincial Policing Standards. The standards will take effect in the fall of 2016 and include provisions for no-barrier reporting, that investigations begin without delay, the recognition of the risk of harm to aboriginal women and girls, and accountability of officer discretion through supervision. Provincial policing standards on major-case management, inter-agency cooperation, and unbiased policing are also under development.

151. For additional information, please refer to Canada's 8th and 9th Reports on the CEDAW, Canada's Response to the Report of the CEDAW Committee concerning its Inquiry on Missing and Murdered Aboriginal Women, and Canada's 21st and 22nd Reports on the CERD.

## Question 24

152. The Government of Canada is committed to addressing, as a matter of priority, the serious issue of violence against Indigenous women and girls. It is an ongoing national tragedy that must be brought to an end.

### Launch of a national inquiry

153. In December 2015, the Government of Canada announced the launch of a national public Inquiry into missing and murdered Indigenous women and girls. The Inquiry will be a critical step in identifying concrete and coordinated actions to respond to violence against Indigenous women and girls, and to prevent future violence.

154. Three federal Ministers were mandated to launch the Inquiry. The Ministers undertook a national pre-Inquiry engagement process from December 2015 to February 2016. This process involved: seventeen face-to-face meetings with one or more of the ministers and over 2,100 survivors, families, loved ones, as well as front-line service providers; engagement of National Aboriginal organizations, provinces and territories, Indigenous leaders, scholars and legal experts; and, over 4,100 submissions received via an online survey, in addition to approximately 300 written submissions.

155. The Government of Canada is also committed to taking into account the recommendations of expert bodies, including this Committee and the CEDAW, in designing the Inquiry. With the pre-Inquiry consultation phase now completed, the Government is developing options based on the feedback received.

156. The Inquiry will be part of Canada's efforts to achieve reconciliation with Indigenous peoples. Canada is committed to a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, co-operation, and partnership – and to making real progress on issues like community safety, policing, housing, employment, health, child welfare, and education. The Inquiry is an important step to achieve these objectives, and is also a crucial part of the Government's commitment to implement the UNDRIP and the Calls to Action of Canada's Truth and Reconciliation Commission on the residential school system.

### Other ongoing efforts

157. In 2015 and 2016, Canada's federal, provincial and territorial governments participated in the first and second meetings of the National Roundtable on Missing and Murdered Indigenous Women and Girls. The Roundtable is a vital forum for governments to engage with non-governmental stakeholders. The 2015 Roundtable endorsed the Framework for Action to Prevent and Address Violence Against Indigenous Women and Girls, which identifies three priority areas for action: prevention and awareness, community safety, and policing measures and justice responses. At the 2016 Roundtable, all participants committed to continued collaboration to prevent and address violence against Indigenous women and girls, including in the context of the National Inquiry. They also agreed to create and implement a set of common performance measures to assess progress toward addressing and reducing the socio-economic gaps experienced by Indigenous peoples, to work collaboratively to improve communication and coordination between Indigenous families and communities, victim services, policing, prosecutions, women's groups, anti-violence groups, and shelter workers, and implement a Canada-wide prevention and awareness campaign focused on changing public perception and attitudes to help end violence against Indigenous women and girls.

158. Moreover, in January 2016, federal, provincial and territorial Ministers Responsible for Justice and Public Safety approved the Justice Framework to Address Violence against Indigenous Women and Girls. The Framework acknowledges the strained relationship between Indigenous Canadians and the justice system, and identifies principles and priorities to help guide the Ministers' focus as they take action with Indigenous peoples and other key partners to improve how the justice system prevents and responds to the violence. The Framework's guiding principles include reconciliation and building trust, respect for human rights, community-based solutions, and changing attitudes and behaviours.

**Policing**

159. The RCMP remains committed to solving outstanding cases of missing and murdered Indigenous women. In 2014, the RCMP released *Missing and Murdered Indigenous Women: A National Operational Overview*, in cooperation with Statistics Canada and approximately 300 policing agencies across Canada. An Update to the Overview was released in June 2015 and included new statistics on missing Indigenous women across Canada and those murdered within RCMP jurisdictions.[56] After the release of the Overview, all outstanding cases of homicide against Indigenous females and missing Indigenous women and girls within RCMP jurisdictions were reviewed to ensure all investigative avenues had been pursued.

160. The RCMP National Missing Persons Strategy outlines steps to be taken in all Missing Persons cases to ensure high quality investigations that are not influenced by officer bias. The strategy reinforces investigative priority, supervisory oversight, as well as, promotes a multi-agency, community response focused on prevention. The Missing Person Policy and the Violence in Relationships Policy were both updated to align with the National Missing Persons Strategy. The Missing Persons Policy highlights: the immediacy and priority of missing person reports; support to families; referrals to victim services with consideration of cultural needs; implementation of a mandatory, standardized risk assessment tool; and, addresses jurisdictional issues related to missing person reporting.

**Provincial and territorial measures**

161. Recent provincial and territorial initiatives include the following:

- In February 2016, Ontario released *Walking Together: Ontario's Long-Term Strategy to End Violence Against Indigenous Women*, which outlines actions to prevent violence and reduce its impact on youth, families and communities. The strategy was developed in collaboration with Indigenous partners. It aims to raise awareness of and prevent violence, provide more effective programs and community services that reflect the priorities of Indigenous leaders and communities, and improve socio-economic conditions that support healing within Indigenous communities. The government has committed $100 million over three years to support implementation.
- British Columbia has released the *Vision for a Violence Free BC Strategy*, which combines immediate actions with a long-term vision to end violence against women in the province. Through the Strategy, British Columbia has invested $824,711 to support projects focused on addressing violence against Indigenous women and girls.

[56] See online: http://www.rcmp-grc.gc.ca/pubs/abo-aut/mmaw-fada-eng.htm

- Yukon has provided $200,000 in funding to five culturally relevant initiatives designed and developed by and for Indigenous women, as a key strategy in taking collective action on violence against Indigenous women.
- In 2015, Québec and Ontario provided financial support for gatherings of loved ones of missing or murdered Indigenous women in their respective provinces. Both events gave these loved ones an opportunity to present their views on how to better prevent and address violence against Indigenous women. Funding from the provinces also enabled the event organizers to release reports recommending solutions to the issue.
- Manitoba has hosted national gatherings focused on violence against Indigenous women and girls, including the Wiping Away the Tears Gathering, for families of missing and murdered Indigenous women and girls (September 2015), and the National Justice Practitioners' Forum (January 2016).

## Question 25

### Federal correctional institutions

162. Prison inmates have access to formal judicial avenues to raise claims of mistreatment, but they also have access to specialized administrative mechanisms for an accessible, fair, and expeditious consideration of their claims. The CSC 's Offender Redress Process is a procedure for resolving offenders' grievances without any negative consequences to the offender. The process is confidential, documented and systematically tracked. Assistance to the offender is available at any stage of the process, including a national toll-free phone number for enquiries. The process has three levels: (1) a written complaint submitted by the offender to the supervisor of the relevant staff member; (2) a grievance submitted directly to the Institutional Head; and (3) a grievance submitted to the Commissioner.

163. Any allegations of mistreatment of offenders (harassment by staff, sexual harassment, or excessive use of force) are taken very seriously and thoroughly investigated. Accordingly, they are given high priority and must be submitted and reviewed at higher levels of the process.

164. Complaints can be escalated to higher levels within CSC, and can be referred to an Outside Review Board at the grievor's request. The Board comprises at least two members of the community. It is established to review initial grievance submissions and their corresponding responses, and make recommendations to the Institutional Head.

165. From April 1, 2014 to September 30, 2015, CSC upheld 15 complaints or grievances related to harassment by staff and 7 related to use of force. Of these, 10 were resolved at the initial level and 12 at the final level. Non-aboriginal offenders accounted for 16 (73%) of the complaints and grievances, and there were no complaints or grievances submitted by women offenders that met the selection criteria.

### Immigration detention

166. Like all persons arrested or detained in Canada, individuals detained for immigration purposes have Charter rights to be informed about the reasons for their arrest or detention, and to retain and instruct counsel. See Question 5 for information on more legal safeguards.

167. Most detainees are held in CBSA immigration holding centres. Detained individuals can speak to a CBSA officer about any aspect of their detention. The officer will look into any complaint as soon as possible. Individuals may also raise any concerns during their

detention reviews before the IRB. Detained individuals with legal counsel can also raise issues with them.

168. The CBSA supports independent monitoring of its detention centres, and encourages and allows intergovernmental organizations and NGOs to access CBSA detention facilities whenever possible, according to national and international standards. Lines of communication have been established to discuss various issues in a proactive manner, including: access to places of detention, regular visits, confidentiality, and recommendations to improve conditions. CBSA facilities, as well as some provincial correctional facilities where immigration detainees are held, are monitored on a quarterly basis by the Canadian Red Cross (CRC), and the UNHCR conducts site visits and interacts with refugee claimants. Individuals can raise concerns with both of these organizations, as well as other organizations with specific responsibilities for immigration detention. In addition to monitoring, the CRC provides recommendations to the CBSA regarding allegations of ill-treatment and access to complaint mechanisms in the facilities to which it has access.

169. According to CBSA records, since May 2012, there have been five cases where individuals held in immigration detention in provincial correctional facilities have alleged some form of mistreatment, either to a UN body or by civil suit. Due to privacy concerns, further details will not be provided. The CBSA cooperates fully with any investigations related to CBSA activities or personnel.

**RCMP**

170. Any individual may complain about an RCMP member's conduct either directly to the RCMP, to the Civilian Review and Complaints Commission for the RCMP (CRCC), or to a provincial police complaints body.

171. Where a complaint is made directly to the RCMP, the RCMP is obligated to acknowledge the complaint, and to notify both the CRCC and the relevant provincial body. The CRCC may then investigate the complaint itself, if it believes that doing so would be in the public interest - in which case the RCMP is precluded from investigating. If the subject matter of the complaint constitutes a serious incident,[17] the complaint will normally be investigated by a provincial/municipal police force or investigative body.

172. Where the RCMP handles a complaint itself, there are three possible outcomes: an informal resolution (only with consent of the complainant); a refusal to investigate (only in narrowly-defined circumstances); or an RCMP Final Report. All Final Reports are provided to the CRCC, which may review the complaint on request from the complainant. See Question 20 for more on the CRCC.

173. Between May 1, 2012 and October 31, 2015, 1888 public complaints were filed directly with the RCMP. Public complaints typically contain multiple kinds of allegations, and many of the categories are not relevant to the current report (e.g. driving irregularity or mishandling of property). For the most relevant categories of allegation, the statistics for this time period are as follows:

[17] Most importantly, an incident in which the actions of an RCMP member "may have resulted in serious injury to, or the death of, any person". See s. 45.79, *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, http://canlii.ca/t/52cjn

| Category of Allegation | Investigated Complaints | | Concluded otherwise (informally resolved, terminated or withdrawn) |
|---|---|---|---|
| | Number Supported | Number Unsupported | |
| Improper Use of Force | 8 | 571 | 185 |
| Improper Use of Firearms | 1 | 27 | 3 |
| Neglect of Duty | 86 | 644 | 263 |
| Statutory Offence | 1 | 65 | 8 |
| Oppressive Conduct | 8 | 145 | 53 |
| Improper Arrest | 13 | 212 | 48 |

174. Between May 1, 2012 and October 31, 2015, the CRCC received 6076 concluded complaints from the RCMP.[38] While none included allegations of torture, they included alleged mistreatment in the following categories:

- 2132 allegations of improper use of force, including use of force that was unnecessary or inconsistent with the circumstances. 40 of these were found to be substantiated, while 1889 were found unsubstantiated.
- 1499 allegations of improper arrest, meaning a violation of the Charter's intent and spirit. Examples include unjustified or unreasonable arrest or detention, and failure to inform the person promptly of the reason for arrest and rights to counsel. 74 of these were found to be substantiated, while 1125 were found unsubstantiated.
- 1047 allegations of oppressive conduct, meaning *bona fide* allegations of severe misuse of police authority or powers; aggravated harassment; unfounded, unfair, or embellished charging; or threats or intimidation via any of the foregoing. 25 of these were found to be substantiated, while 750 were found unsubstantiated.

175. Some complaints were recorded as neither "substantiated" nor "unsubstantiated". Those were either informally resolved, terminated or withdrawn.

**Provinces and territorial examples**

176. In Manitoba, the Law Enforcement Review Agency received 261 complaints against on duty officers for alleged ill-treatment (use of unnecessary or excessive force). Due to the potential for parallel complaints, single incidents may be counted twice. Similarly, within the past three years, Manitoba Corrections has logged approximately 45 incidents of suspected prisoner mistreatment that resulted in a formal investigation; one conviction (for assault) has occurred.

177. In Quebec, from May 2012 to October 2015, 68 complaints of physical violence on the part of staff members were submitted to correctional authorities by detainees. Of that number, 18 were found to be valid. In the same period, a little more than 150,000 were admitted to detention.

178. In British Columbia, the Office of the Police Complaints Commission conclude 2326 conducted related complaints against municipal police from 2012-2015. In total 235 allegations (10.1%) were substantiated, while 1122 (48.2%) were unsubstantiated. The remaining allegations (969; 41.6%) were either informally resolved, withdrawn, closed, discontinued, or mediated.

[38] Note that because the CRCC receives concluded complaints that were filed directly with the RCMP, these numbers may overlap

179. Individuals may also pursue remedies for police mistreatment in civil courts. For example, in *Elmardy v Toronto Police Services Board*,[39] an individual complained of being assaulted by a police officer, handcuffed, and illegally detained for 30 minutes. The Ontario Superior Court found in his favour, awarding him $21,000.

## Question 26

180. The Independent Investigations Office (IIO) of British Columbia is an independent, civilian-led body that became operational in September 2012. The IIO is empowered to conduct prompt and impartial investigations into incidents of death or serious harm involving police officers in the province, while on or off duty. All police officers, chief constables, and the Police Complaint Commissioner in BC are required to immediately notify the IIO when an incident of death or serious harm involving police occurs. The IIO determines whether to assert jurisdiction and conduct an investigation.

181. A Memorandum of Understanding between the IIO, RCMP and municipal police in BC establishes a protocol for all aspects of investigations, including notification of the IIO, scene security, designation of subject and witness officers, and concurrent investigations. Following the conclusion of an investigation, the Chief Civilian Director must make a report to Crown Counsel if an officer may have committed an offence. If the Director believes an officer has not committed an offence, the reasons may be publicly reported.

182. A Special Committee of the Legislative Assembly recently reviewed the Director's progress in civilianizing the IIO. In February 2015, the committee submitted its report to the Legislative Assembly, including seven recommendations.[40] The Ministry of Justice is now reviewing the recommendations as well as the IIO's standard for referrals to Crown prosecutors.

## Question 27

### Redress and compensation for victims

183. As discussed above, acts of torture are prohibited under the Charter, the *Criminal Code* and ordinary civil law. Canada is committed to preventing acts of torture by Canadian officials. If a Canadian official were ever to commit or participate in torture, the victim would have a number of avenues of civil redress. For example, the victim could seek a wide range of remedies in court for a violation of his or her Charter rights, including but not limited to monetary compensation ("Charter damages"). The victim could also bring a civil action for compensation ("civil damages"), either in tort in common law jurisdictions, or pursuant to the civil law of Quebec.

184. Canada is not aware of any civil judgments rendered during the reporting period in which a claim of torture alleged to have been committed in Canada by Canadian officials has been substantiated. Furthermore, while claims for civil compensation are brought frequently against the federal and provincial governments for a variety of reasons, Canada is not aware that any of the cases brought during the reporting period allege mistreatment in Canada by Canadian officials that would meet the definition of torture. (See Questions 20 and 25 for information on complaints alleging mistreatment in Canada by law enforcement or other public officials.)

[39] 2015 ONSC 2952, http://canlii.ca/t/ghj55

[40] See online: https://www.leg.bc.ca/content/CommitteeDocuments/40th-parliament/4th-session/iio/reports/PDF/Rpt-IIO-40-4-Report-2015-FEB-23.pdf

185. There have been a limited number of civil actions by individuals in recent years, seeking compensation from the Government of Canada for alleged participation by Canadian officials that contributed to acts of torture or other mistreatment committed abroad by foreign officials. Since May 2012, one of these cases has been resolved by agreement between the parties and one dismissed by the court because the plaintiff failed to move the proceeding forward. Canada does not comment publicly on the terms of any settlements, but measures of redress can include monetary compensation or other terms. Canada is aware of five civil actions currently ongoing (see e.g. Question 28).

**State Immunity Act**

186. Canada's *State Immunity Act* (SIA) implements in domestic law the restrictive doctrine of state immunity that is a recognized part of customary international law. The SIA establishes that foreign states are generally immune from the jurisdiction of Canadian courts. The SIA also sets out an exhaustive list of exceptions to this general immunity. The SIA does not contain an exception for acts of torture committed outside of Canada by or at the instigation of or with the consent or acquiescence of a foreign public official. As a result, victims of torture committed abroad do not have access to Canadian courts to seek civil redress from a foreign state or its officials. In the Supreme Court of Canada's 2014 decision in *Kazemi*, it confirmed that this aspect of the SIA is consistent with the Charter right to life, liberty and security of the person. In doing so, the Court considered Canada's international obligations (including under Article 14 of the Convention) and the views of the Committee on the interpretation of this provision. See Questions 1 and 3.

187. Canada is not currently considering amending the SIA to provide an exception to state immunity for acts of torture committed outside of Canada by foreign states. Article 14 of the Convention does not require States parties to provide civil remedies for torture committed in foreign states. This conforms to international law on state immunity and is in accordance with Canada's obligations under international human rights law.

## Question 28

188. With respect to Messrs. Almalki, Elmaati and Nureddin, civil litigation trials have been ordered to commence in the Ontario Superior Court of Justice in January 2017. Government witnesses have participated in the discovery process and have been examined by the plaintiffs. Discovery of the plaintiffs is presently underway. A court-ordered mediation began in late June and is scheduled to resume in August 2016. The merits of proceeding with a trial are being considered by all parties.

189. On September 29, 2012, the United States transferred Mr. Omar Khadr, a Canadian citizen, from Guantanamo Bay into Canadian custody. The transfer was pursuant to Canada's *International Transfer of Offenders Act*. In April 2015, Mr. Khadr was granted bail by an Alberta court, pending the outcome of his appeal in the United States of his conviction and sentencing by the U.S. Military Commission. He was released from custody in May 2015, and remains in the community on conditions. Mr. Khadr currently resides in Alberta, and the provincial government is responsible for administering his conditions of release. Those conditions may be reviewed by a court on request.

190. In 2004, Mr. Khadr filed a claim in Canada's Federal Court alleging a breach of his Charter rights seeking $10 million in damages, and seeking a permanent injunction on the use of information obtained by Canadian officials during interviews of him at Guantanamo Bay. In October 2014 the claim was amended to $20 million in damages. The civil action is ongoing, and so the matter of compensation has yet to be resolved.

191. For privacy reasons, the Government of Canada cannot provide any information with respect to psychological rehabilitation or assistance provided to Mr. Khadr.

## Question 29

192. Canada has many programs that provide funding and support to individuals who were victims of torture abroad and are now in Canada. This includes support for the Canadian Centre for Victims of Torture, for which the Government of Canada, provincial and municipal governments, among others, continue to provide significant funding. Victims of torture can also benefit from a broad range of social programs such as universal health care, legal aid, and social assistance, which are generally administered at the provincial/territorial levels.

193. The Government of Canada's Resettlement Assistance Program (RAP) supports the immediate and essential needs of government-assisted refugees (and other eligible clients) upon their arrival in Canada. The RAP provides direct financial support, consisting of a one-time start-up allowance and monthly income support which is typically provided for up to one year. The RAP also funds service provider organizations to deliver immediate and essential services, typically delivered within the first four to six weeks of a client's arrival.

194. These services include a "needs assessment and referral plan" which links RAP clients to settlement and broader based services in the community. Examples of broader community based services that may be relevant to the rehabilitation of victims of torture include: centers for victims of trauma and/or torture, mental health centers, psychotherapy professionals, specialized hospitals (e.g. for children or women), family support, legal information services, and social/community support.

195. Canada recently committed to accept 25,000 refugees, displaced as a result of ongoing civil war in Syria. While the overall health of Syrians prior to the conflicts was very good, sustained hardships for many Syrian refugees have resulted in a deterioration of their overall health and well-being. The Government recognizes the need to address mental health issues, including post-traumatic stress disorder (PTSD) that are impacting refugees. Accordingly, the Government of Canada is disseminating information on potential mental health issues that health care professionals may see in this patient population. For example, the Public Health Agency of Canada collaborated with immigrant health experts on a webinar series to raise awareness among health professionals across Canada about PTSD, treatment/referral options, and culturally appropriate care.

## Question 30

196. Subsection 269.1(4) of the *Criminal Code* bars the admission into evidence of any statement obtained by torture for any purpose, except as evidence that the statement was in fact obtained by torture. This prohibition plays an important denunciatory role in Canada's overall regime to prohibit and prevent torture. The s. 269.1(4) exclusionary rule applies to "[a]ny proceedings over which Parliament has jurisdiction". Hence, it applies not only to criminal proceedings, but also to federal administrative, investigatory and disciplinary proceedings (such as parole board hearings and prison, police and military disciplinary hearings), as well as all civil proceedings over which the Parliament of Canada has jurisdiction. This includes proceedings under IRPA,[41] the *Crimes against Humanity and*

[41] See e.g. *Sian v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1022, http://canlii.ca/t/g6w.

*War Crimes Act*, and the *Extradition Act*. See Question 6 for information on the exclusionary rule in security certificate proceedings.

197. The recent case of *United States of America v. Tsai* discusses the application of this rule in extradition proceedings. The Alberta Court of Appeal noted that evidence obtained through torture is "unreliable, offensive to the rule of law and the product of an abhorrent practice", and that its use in legal proceedings is prohibited under the Convention and under subsection 269.1(4).[42] The Court noted that given the difficulties in proving state torture, individuals sought for extradition must only demonstrate "an air of reality" to their allegations of torture, in order to have the evidence removed from the record or subject to further scrutiny. However, in this specific appeal, no remedy was needed, as the impugned evidence was not necessary to warrant the individual's committal for extradition.

198. Although subsection 269.1(4) has played a role in cases such as *Tsai*, Canada is not aware of any cases within the reporting period where evidence was directly excluded by a court pursuant to the statutory exclusionary rule in subsection 269.1(4). However, the Charter provides more flexible protections against the admission of evidence obtained via mistreatment, and these protections are invoked more often. Where a court concludes that evidence has been obtained in a manner contrary to the Charter, the evidence must be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute. Further, a court may also exclude evidence where its admission would render a proceeding unfair, so as to violate s. 7 of the Charter.

199. Two recent judicial decisions illustrate how these constitutional protections can lead to the exclusion of evidence obtained as a result of physical mistreatment. In *Botten*,[43] the accused had been arrested by police, held for three hours in the rain, and unlawfully detained overnight in a cold and overcrowded environment. The court held that this was an arbitrary detention, and excluded the evidence obtained as a result. In *Persad*,[44] the court held that the police used "unreasonable, excessive and unjustified" force against the accused, after he was tasered four times during a search of his home. The excessive use of force, together with defects in the issuance of the search warrant, led to the exclusion of evidence obtained during the search.

## Question 31

200. Canada is proud to be a global leader in protecting the rights of LGBT persons, but unfortunately homophobia and transphobia continue to exist. Particularly concerning are ongoing incidents of violence and bullying. There were 155 incidents of police-reported hate crimes motivated by sexual orientation in 2014, down from 186 in 2013. According to the report on police-reported hate crimes for 2013, hate crimes motivated by sexual orientation are more likely to be violent than hate crimes targeting other groups. LGBT youth are at greater risk of experiencing bullying than their peers.

201. Canada takes this violence very seriously. The *Criminal Code* prohibits the wilful promotion of hatred, as well as the incitement of hatred in a public place that is likely to cause a breach of the peace, when made against an identifiable group. The definition of "identifiable group" includes a group that is identifiable on the basis of sexual orientation. Government legislation (Bill C-16) would add gender identity and gender expression to

[42] 2014 ABCA 256 at para. 29, online: http://canlii.ca/t/g8j4z. See also *France v. Diab*, 2014 ONCA 374, online: http://canlii.ca/t/gfxw4d.

[43] *R. v. Botten*, (October 4, 2012), 98 C.R. (6th) 328 (Ont. S.C.J.), 2012 CarswellOnt 13335.

[44] *R. v. Persad*, 2012 ONSC 3390, http://canlii.ca/t/ftlln.

the list of distinguishing characteristics of the "identifiable groups" that are protected by these offences.

202. In the criminal sentencing context, courts must also consider as an aggravating factor that an offence was motivated by hate based on an open-ended list of criteria, including sex, sexual orientation or "any other similar factor", which can be interpreted to include gender identity. The *Criminal Code* also contains a number of offences that can apply to serious bullying and cyber-bullying. In addition, certain provinces have adopted specific anti-bullying legislation. Several Canadian police services have established specialized hate crime units for the reporting and investigation of hate crimes, and some offer specialized training for officers.

203. Provincial and territorial governments are also working to prevent violence and hate crimes against LGBT persons. For example, Newfoundland and Labrador's Violence Prevention Initiative, a government-community partnership aimed at finding long-term solutions to violence against at-risk groups, specifically recognizes LGBT persons as one of the groups most at risk of violence. Similarly, the Violence Prevention Action Plan, in partnership with the Department of Education and Early Childhood Learning, includes a commitment to provide safer and inclusive schools for LBGT youth.

204. More generally, governments in Canada have various programs and policies to protect the rights of LGBT persons and to tackle homophobia. For example, in May 2011, Quebec launched a five-year Governmental Action Plan to combat homophobia. The plan comprises 60 concrete actions to support LGBT people, including a media and online awareness campaign, the establishment of an Office to combat homophobia, and a substantial increase in funding to organizations that advocate for and defend the rights of sexual minorities or support LGBT individuals. The plan provides for specialized training activities on LGBT issues, including for correctional officers and health and social service workers.[45]

## Question 32

205. Canada's national Guidelines for the Use of Conducted Energy Weapons (CEWs) were released in October 2010, and are subject to review as new information becomes available. These Guidelines were developed based on national consultations and are intended to assist provinces and territories, as well as police services and other agencies in Canada, in developing their own policies and procedures for CEWs.[46]

206. The Guidelines include basic principles describing circumstances for CEW use. For example, the Guidelines state that: whenever force is used, it should be in compliance with the Charter and the *Criminal Code*; officers should, in all instances, use an appropriate and reasonable level of force, given the totality of circumstances; and the use of a CEW should be consistent with a federally or provincially recognized use-of-force framework, particularly with respect to having considered or applied de-escalation techniques or other use-of-force options, as appropriate. The Guidelines address use of CEWs, training, testing, supervision and reporting on their use. It is the responsibility of federal, provincial, territorial, and/or municipal governments and police services to develop detailed operational policies on CEWs, as is the case for the use-of-force by police generally.

207. In March 2014, following completion of a multi-year, national CEW research agenda, the Guidelines were reviewed and minor updates were proposed. This included

[45] See online: http://www.justice.gouv.qc.ca/english/ministere-dossiers/homophobie/homophobie-a.htm

[46] See online: http://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/gdlns-cndctv-nrg-wpns/index-en.aspx

providing further guidance for CEW testing procedures, identifying sensitive areas on the body where the use of CEWs should be avoided (e.g. head, neck, genitals), and noting the need to consider the availability of medical care in isolated, remote, and Northern communities (when medical assistance would need to be sought following potential use of a CEW).

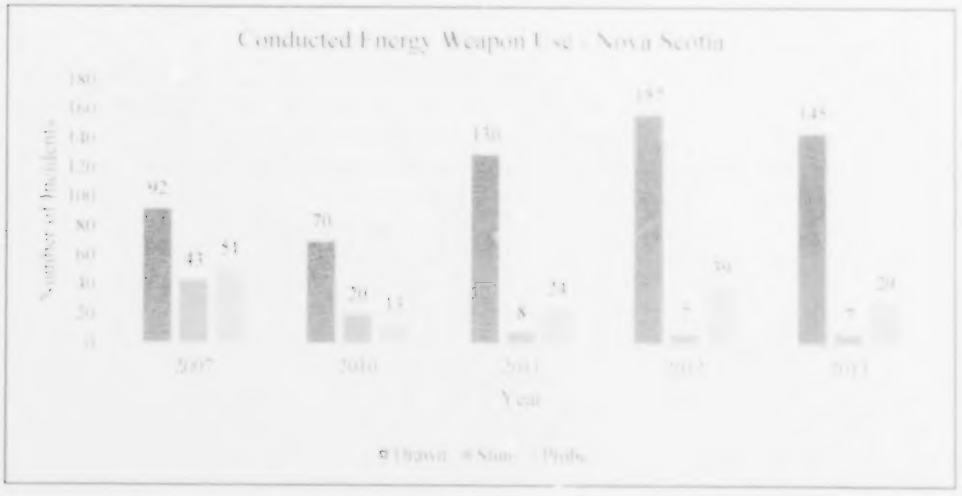
208. Testing differs by jurisdiction. The RCMP, in addition to testing 10% of its CEWs annually and meeting any provincial or territorial guidelines, requires that CEWs are tested when an incident involves life-threatening injuries or death proximal to the use of a CEW, a CEW malfunctions, direction is given that testing is required, and before a new CEW is put into operational service.

209. In British Columbia, CEWs are tested two years after they are acquired and every year thereafter, as well as immediately after a CEW is used in an incident where either serious injury or death occurs proximate to its use.

210. Specific thresholds for the use of CEWs are included in various operational policies for different police forces. For example, the RCMP Operational Manual provides that CEWs must only be used when a subject is causing bodily harm, or the member believes on reasonable grounds that the subject will imminently cause bodily harm as determined by the member's assessment of the totality of the circumstances.

211. At the provincial level, the Government of Ontario guides police services on the use of CEWs through a publicly available Use of Force Guideline. According to the Guideline, a Chief of Police may permit an officer to use a CEW if: (1) the officer believes a subject is threatening or displaying assaultive behaviour or, taking into account the totality of the circumstances, the officer believes there is an imminent need for control of a subject, and (2) the officer believes it is reasonably necessary to use a CEW.

212. Similarly, in Nova Scotia, guidelines require that CEWs only be deployed if the officer believes that the subject's behaviour is consistent with aggressive or violent resistance, or presents an active threat that may cause bodily harm or serious injury. Although the number of times that CEWs have been drawn and displayed in Nova Scotia has increased over the last four years (compared to 2007), there has been a substantial decrease in the number of times that CEWs have been used for a contact stun or probe. See the chart below.



## Question 33

213. The criminal offence of assault is defined very broadly in Canadian law, so as to generally criminalize any non-consensual use of force against another person, including where used as punishment. Section 43 of the *Criminal Code* provides a limited defence for parents who use minor corrective force toward a child under their care, if that force does not exceed what is reasonable under the circumstances. Without this section, parents who carry a child to their bedroom for a "time-out" could risk being convicted of assault.

214. In 2004, the Supreme Court of Canada upheld section 43 as consistent with the Charter and Canada's obligations under the UN *Convention on the Rights of the Child*, and narrowed the scope of the defence so it only permits "minor corrective force of a transitory and trifling nature".[47] The Court's decision provides guidelines in this regard, and clearly states that teachers may not use corporal punishment under any circumstances. Furthermore, many provinces and territories have civil legislation that explicitly prohibits corporal punishment in schools.

215. The Government of Canada actively supports programs that discourage the physical discipline of children, including the Nobody's Perfect parenting program, which is offered across Canada for parents of children up to age five. The program includes practical information for parents on non-physical forms of discipline.[48] The Public Health Agency of Canada and the Department of Justice also publish materials to promote positive parenting skills and encourage non-physical discipline.[49]

## Question 34

216. Canada is committed to combating terrorism in a manner that is in accordance with the Charter and with Canada's international obligations, including its obligations to respect and ensure human rights without discrimination of any kind. Canada's anti-terrorism legislation implements Security Council Resolution 1373 and related obligations. This legislation has been designed to protect the security of Canadians while also protecting their rights and freedoms.

### Ongoing assessment of counter-terrorism measures

217. Parliament enacted the *Anti-terrorism Act, 2015*, which introduced measures for national security and law enforcement agencies to address terrorism and other threats. The Act created new authorities for government institutions to share information relevant to national security. The Act also amended Canada's aviation security framework, created a mandate for CSIS to take action to reduce threats to the security of Canada, and introduced measures to protect sensitive information in immigration proceedings. Finally, the Act amended the *Criminal Code* to address terrorist incitement and propaganda, and to prevent acts of terrorism.

[47] *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4 at para. 29, http://canlii.ca/t/1g990.

[48] http://www.phac-aspc.gc.ca/hp-ps/dca-dea/parent/nobody-personne/index-eng.php.

[49] See online: http://healthycanadians.gc.ca/publications/healthy-living-vie-saine/spanking-2015-fessee/index-eng.php?_ga=1.54799659.1261633762.1467922430 and http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/caw-mec/index.html.

218. The Government of Canada intends to assess how the *Anti-terrorism Act, 2015* can be improved and then bring necessary amendments, that will uphold collective security and individual rights and freedoms. The Government will engage in public consultations to ensure that Canada's national security framework reflects the needs and values of Canadians. This will allow for collaboration between governments, stakeholders, subject matter experts, and members of the public.

219. Moreover, the Government of Canada has introduced legislation that strengthens its system of accountability for national security by creating a multi-party committee of parliamentarians with special access to classified information. The committee will be mandated to scrutinize national security and intelligence activities across the Government of Canada to ensure respect for the law and democratic values.

220. Canada recognizes that developing tools to prevent radicalization to violence is an essential and integral part of counter-terrorism. One way to achieve this is by actively maintaining constructive relationships with Canada's diverse communities, working with them to prevent and counter radicalization to violence, and promoting community resilience. Canada has allocated funding to establish an Office for community outreach and countering radicalization to violence, which will provide leadership and coordination on Canada's response to radicalization to violence, engage with provincial/territorial and international partners, and support community outreach and research. Canada will be developing a national strategy to counter radicalization to violence, and Canadians will be broadly consulted.

**Prosecutions, complaint processes, and remedies**

221. Between May 2012 and January 2016, terrorism offence charges under the Criminal Code were laid against 27 individuals. Of these 27 individuals:

- A stay of proceedings was directed in one case.
- Six individuals have been convicted of terrorism offences. Four of these have since filed appeals of their conviction, which are still before the courts.
- One individual was found not guilty of all charges.
- Warrants are outstanding against 7 individuals who are not within Canada and whose whereabouts are unknown.
- Proceedings are ongoing against 12 individuals.

222. An individual who is the subject of Canadian counter-terrorism measures has various options to lodge a complaint. The Communications Security Establishment (CSE), CSIS, and the RCMP are all subject to arm's length external review bodies that ensure accountability, including by hearing complaints from individuals. Additionally, individuals can complain to the Office of the Privacy Commissioner about compliance with the *Privacy Act*, which covers the personal information-handling practices in the federal government. Individuals who have their passport cancelled on national security grounds under the *Canadian Passport Order* can apply to the Passport Cancellation Reconsideration Office for reconsideration, or write directly to the Minister of Public Safety and Emergency Preparedness. Finally, a person who was denied transportation and has received a written direction under the Passenger Protect Program can apply to the Passenger Protect Recourse Office to request that their name be removed from the list.

223. Individuals can also pursue legal proceedings if they believe their human rights have been infringed by a counter-terrorism investigation or prosecution. The primary avenue for such allegations would be a claim under the Charter. For example, in *R. v. Khawaja*, the individual was convicted of various terrorism offences. He challenged his conviction by claiming that the *Criminal Code* definition of "terrorist activity" was contrary to the Charter right of freedom of expression. His claim was rejected by the Supreme Court of Canada in December 2012.[80]

[80] 2012 SCC 69, http://canlii.ca/t/fx831